



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 9]

No. 9]

नई दिल्ली, फरवरी 22-फरवरी 28, 2009, शनिवार/फाल्गुन 3-फाल्गुन 9, 1930
NEW DELHI, FEBRUARY 22-FEBRUARY 28, 2009, SATURDAY/PHALGUNA 3-PHALGUNA 9, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II-खण्ड 3-उप-खण्ड (ii)
PART II-Section 3-Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 12 फरवरी, 2009

का.आ. 476.—केन्द्रीय सरकार, मुम्बई उच्च न्यायालय में
अपर लोक अभियोजक श्री राजीव पाटिल के त्यागपत्र को तत्काल
प्रभाव से स्वीकार करती है।

[फा. सं. 23(2)/2008-न्यायिक]

एम. ए. खान यूसुफी, संयुक्त सचिव और विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 12th February, 2009

S.O. 476.—The Central Government hereby
accepts the resignation of Shri Rajiv Patil as Additional
Public Prosecutor in the High Court of Judicature at Mumbai
with immediate effect.

[F. No. 23(2)/2008-Judl.]

M. A. KHAN YUSUFI, Jt. Secy. and Legal Adviser

नई दिल्ली, 12 फरवरी, 2009

का.आ. 477.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973
(1974 का 2) की धारा 24 की उप-धारा (1) द्वारा प्रदत्त शक्तियों
का प्रयोग करते हुए, श्री किरन जे. कांडिले, अधिवक्ता को मुम्बई
उच्च न्यायालय में भारत संघ या केन्द्रीय सरकार के किसी विभाग या
कार्यालय द्वारा या उसके विरुद्ध सभी दंडिक मामलों का, जिनके
अंतर्गत दंडिक रिट याचिकाएं, दंडिक अपीलें, दंडिक पुनरीक्षण,
दंडिक निर्देश और दंडिक आवेदन भी हैं, संचालन करने के प्रयोजन
के लिए इस शर्त के अधीन रहते हुए कि श्री किरन जे. कांडिले,
अधिवक्ता अपनी नियुक्ति की अवधि के दौरान भारत संघ या केन्द्रीय
सरकार के किसी विभाग या कार्यालय के विरुद्ध ऊपर निर्दिष्ट किसी
दंडिक मामले में मुम्बई उच्च न्यायालय में उपसंजात नहीं होंगे, इस
अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए या
अगले आदेश तक, इनमें से जो भी पूर्वतर हो, अपर लोक अभियोजक
के रूप में नियुक्त करती है।

[फा. सं. 23(2)/2009-न्यायिक]

एम. ए. खान यूसुफी, संयुक्त सचिव और विधि सलाहकार

New Delhi, the 12th February, 2009

S.O. 477.—In exercise of the powers conferred by
sub-section (1) of Section 24 of the Code of Criminal

(927)

Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Kiran J. Kandpile, Advocate as Additional Public Prosecutor for the purpose of conducting all criminal cases including criminal writ petitions, criminal appeals, criminal revisions, criminal references and criminal applications by or against the Union of India or any Department or Office of the Central Government, in the High Court of Judicature at Mumbai, with effect from the date of publication of this notification in the Official Gazette, for a period of one year or until further orders, whichever is earlier, subject to the condition that Shri Kiran J. Kandpile, Advocate shall not appear against the Union of India or any Department or Office of the Central Government in any criminal case referred to above, in the High Court of Judicature at Mumbai during the period of his appointment.

[F. No. 23(2)/2009-Judl.]

M. A. KHAN YUSUFI, Jt. Secy. and Legal Adviser

नई दिल्ली, 19 फरवरी, 2009

का.आ. 478.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री अजय, श्रीकांत गडकरी, अधिवक्ता को मुम्बई उच्च न्यायालय में भारत संघ या केन्द्रीय सरकार के किसी विभाग या कार्यालय द्वारा या उसके विरुद्ध सभी दंडिक मामलों का, जिनके अंतर्गत दंडिक रिट याचिकाएँ, दंडिक अपीलें, दंडिक पुनरीक्षण, दंडिक निर्देश और दंडिक आवेदन भी हैं, संचालन करने के प्रयोजन के लिए इस शर्त के अधीन रहते हुए कि श्री अजय, श्रीकांत गडकरी, अधिवक्ता अपनी नियुक्ति की अवधि के दौरान भारत संघ या केन्द्रीय सरकार के किसी विभाग या कार्यालय के विरुद्ध ऊपर निर्दिष्ट किसी दंडिक मामले में मुम्बई उच्च न्यायालय में उपसंजात नहीं होंगे, इस अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, अपर लोक अभियोजक के रूप में नियुक्त करती हैं।

[फा. सं. 23(2)/2009-न्यायिक]

एम. ए. खान यूसुफी, संयुक्त सचिव और विधि सलाहकार

New Delhi, the 19th February, 2009

S.O. 478.—In exercise of the powers conferred by sub-section (1) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Ajey Shrikant Gadkari, Advocate as Additional Public Prosecutor for the purpose of conducting all criminal cases including criminal writ petitions, criminal appeals, criminal revisions, criminal references and criminal applications by or against the Union of India or any Department or Office of the Central Government, in the High Court of Judicature at Mumbai, with effect from the date of publication of this notification in the Official Gazette, for a period of one year or until further orders, whichever is earlier, subject to the condition that Shri Ajey Srikant Gadkari, Advocate shall not appear against the Union of India or any Department or Office of the Central Government in any criminal case referred to above, in the High Court of Judicature at Mumbai during the period of his appointment.

[F. No. 23(2)/2009-Judl.]

M. A. KHAN YUSUFI, Jt. Secy. and Legal Adviser

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

शुद्धिपत्र

नई दिल्ली, 17 फरवरी, 2009

का.आ. 479.—कार्मिक और प्रशिक्षण विभाग की दिनांक 16-09-2008 की अधिसूचना सं. 225/30/2007-एवीडी-II में आंशिक संशोधन करते हुए, क्रम सं. 2 पर उल्लिखित नाम को 'समीर रंजन भट्टाचार्य' के स्थान पर 'समीर भट्टाचार्य' के रूप में पढ़ा जाए।

[सं. 225/30/2007-एवीडी-II]

चंद्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

CORRIGENDUM

New Delhi, the 17th February, 2009

S.O. 479.—In partial modification of the Department of Personnel and Training's notification of even number dated 16th September, 2008, the name at Sl. No. (ii) may be read as 'Samir Bhattacharya' instead of 'Samir Ranjan Bhattacharya'.

[No. 225/30/2007-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 20 फरवरी, 2009

का.आ. 480.—केन्द्रीय सरकार, एतद्द्वारा, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, गुवाहाटी उच्च न्यायालय की शिलांग खंडपीठ में केन्द्रीय अन्वेषण ब्यूरो के रिटैनेल काउंसिल अधिवक्ता श्री वी. के. जिंदल को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित मामलों में अभियोजन चलाने, अपील, पुनरीक्षण या इनसे उद्भूत अन्य कार्रवाईयों के लिए गुवाहाटी उच्च न्यायालय की शिलांग खंडपीठ में विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/39/2006-एवीडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 20th February, 2009

S.O. 480.—In exercise of the powers conferred by the provisions of sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri V. K. Jindal, Advocate and Retainer Counsel of Central Bureau of Investigation, in the Guwahati High Court at Shillong as Special Public Prosecutor, for conducting prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment in the Shillong Bench of Guwahati High Court.

[No. 225/39/2006-AVD-II]

CHANDRA PRAKASH, Under Secy.

कार्यालय मुख्य आयकर आयुक्त

जोधपुर, 18 दिसम्बर, 2008

सं. 4/2008-09

का.आ. 481.—आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 ग) के उपखण्ड (vi), अपद्ध के साथ पठित आयकर नियमावली, 1962 के नियम 2 ग ए द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जोधपुर एतद्द्वारा सरस्वती शिक्षण समिति, मांडिया रोड, पाली (राजस्थान) को उक्त धारा के प्रयोजनार्थ निर्धारण वर्ष 2005-06 तथा आगे जब तक इसे वापस न लिया जाए तब तक निम्नलिखित शर्तों के अधीन अनुमोदित करते हैं :-

1. कर निर्धारिती उसकी आय का प्रयोग अथवा उसकी आय का प्रयोग करने के लिए उसका संचयन पूर्णतः तथा अनन्यतः उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई;
2. कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जेवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
3. यह आदेश किसी ऐसी आय के सम्बन्ध में लागू नहीं होगा, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के सम्बन्ध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
4. कर निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा;
5. विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसंपत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी और उसका कोई भी भाग संस्थान के किसी सदस्य को नहीं दिया जाएगा।

[संदर्भ सं.-मु.आ.अ./आ.अ.(तक.)/जोध./2008-09/2938]

बी. एस. डिल्ली, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF
INCOME-TAX

Jodhpur, the 18th December, 2008

No. 4/2008-09

S.O. 481.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-

tax Act, 1961 (43 of 1961) read with rule 2CA of the Income Tax Rules, 1962, I, the Chief Commissioner of Income Tax, Jodhpur hereby approve "SARASWATI SHIKSHAN SAMITI, MANDIA ROAD, PALI (RAJASTHAN)" for the purpose of the said section for the assessment year 2005-06 and onward until withdrawn, subject to the following conditions :-

1. the assessee will apply its income, or accumulate for application wholly and exclusively to the objects for which it is established;
2. the assessee will not invest or deposit its funds (other than voluntary contribution received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11;
3. this order will not apply in relation to any income being profits and gain of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
4. the assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of Income-tax Act, 1961;
5. that in the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives and no part of the same will go to any of the members of the Institution.

[Ref. No. CCIT/ITO(Tech.)/Ju/2008-09/2938]

B. S. DHILLON, Chief Commissioner of Income Tax

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 20 फरवरी, 2009

का.आ. 482.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री राहुल खुल्लर, सचिव, विनिवेश, वित्त मंत्रालय को श्रीमती सुषमा नाथ, सचिव, व्यय विभाग, के स्थान पर बीमा विनियामक और विकास प्राधिकरण (आईआरडीए) में तत्काल प्रभाव से अगले आदेशों तक, अंशकीलिक सदस्य के रूप में नियुक्त करती है।

[फा. सं. 11/6/2003-बीमा-III]

सुकृति लिखी, निदेशक (बीमा)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 20th February, 2009

S.O. 482.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Shri Rahul Khullar, Secretary (Disinvestment), Ministry of Finance as Part-time Member of the Insurance Regulatory and Development Authority (IRDA) vice Smt. Sushma Nath, Secretary, Department of Expenditure with immediate effect and until further orders.

[F. No. 11/6/2003-Ins.-III]

SUKRITI LIKHI, Director (Ins.)

नई दिल्ली, 24 फरवरी, 2009

का.आ. 483.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबन्ध) स्कीम, 1970/1980 के खण्ड 3 के उप खण्ड (1) के साथ पठित बैंककारी कम्पनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 (ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. निर्मल खत्री को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों के लिए अथवा अगला आदेश होने तक, जो भी पहले हो, यूको बैंक के निदेशक मंडल में अंशकालिक गैर सरकारी निदेशक के रूप में नियुक्त करती है।

[फा. सं. 9/21/2008-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 24th February, 2009

S.O. 483.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Dr. Nirmal Khatri as Part-time Non-Official Director on the Board of Directors of UCO Bank, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 9/21/2008-BO-I]

G. B. SINGH, Dy. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 17 फरवरी, 2009

का.आ. 484.—केन्द्रीय सरकार भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में और गुजरात सरकार से परामर्श करने के बाद डॉ. त्रिपाठी चन्द्रभानू राजकिशोर, आचार्य एवं प्रमुख, भेषजगुण

विज्ञान, गुजरात सरकार का मेडिकल कालेज, भावनगर को इस अधिसूचना के जारी होने की तारीख से पांच वर्षों के लिए भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में मनोनीत किया है।

अतः अब उक्त अधिनियम की धारा (1) के उपबन्ध के अनुसरण में, केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का. आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत" शीर्षक के अन्तर्गत क्रम संख्या 14 और उससे सम्बन्धित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियाँ प्रतिस्थापित की जाएंगी, अर्थात् :-

"14. डॉ. त्रिपाठी चन्द्रभानू
राजकिशोर आचार्य एवं
प्रमुख भेषजगुण विज्ञान,
गुजरात सरकार का मेडिकल
कालेज, भावनगर

गुजरात सरकार"

[सं. वी.-11013/2/2007-एमई(नीति-1)]

वी. के. शर्मा, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family welfare)

New Delhi, the 17th February, 2009

S.O. 484.—Whereas the Central Government, in pursuance of clause (a) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Gujarat have nominated Dr. Tripathi Chandrabhanu Rajkishor, Professor & Head, Pharmacology, Government of Gujarat Medical College, Bhavnagar to be a member of the Medical Council of India for five years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely:—

In the said Notification, under the heading, "Nominated under clause (a) of sub section (1) of section 3", for serial number 14 and the entries thereto, the following entries shall be substituted, namely:—

"14. Dr. Tripathi Chandrabhanu
Rajkishor, Professor & Head,
Pharmacology, Government
of Gujarat Medical College,
Bhavnagar

Government of
Gujarat".

[No. V.-11013/2/2007-ME(P-I)]

V. K. SHARMA, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 9 फरवरी, 2009

का.आ. 485.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 10221 : 2008—भूमिगत मृदु इस्पात पाईपों के लिये विलेपन और संवेष्टन-रीति संहिता (पहला पुनरीक्षण)	आई एस 10221 : 1982	30 नवम्बर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : एम.टी.डी. 24/टी. 23]

डॉ. (श्रीमति) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 9th February, 2009

S.O. 485.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereby annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 10221 : 2008—Coating and wrapping of underground mild steel pipelines—Code of Practice (First Revision)	IS 10221 : 1982	30 November, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch

Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 24/T-23]

Dr. (Mrs.) SNEH BHATLA, Sc. 'F' & Head (MTD)

नई दिल्ली, 12 फरवरी, 2009

का.आ. 486.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 14333:1996	4 जनवरी, 2009	03 फरवरी, 2009

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 12th February, 2009

S.O. 486.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Amendments to the Indian Standards, particulars of which are given in the Schedule hereby annexed have been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of The amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 14333:1996	4 January, 2009	03 February, 2009

Copy of this Amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc. 'F' & Head (Civil Engg.)

नई दिल्ली, 13 फरवरी, 2009

का.आ. 487.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	IS 15354 : 2008/ISO 11193 : 1994 एक बार उपयोग के लिए परीक्षण दस्ताने-विशिष्ट (संशोधन सं. 1)	कुछ नहीं	दिसम्बर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : पीसीडी जी/-7 (गजट)]

डॉ. (श्रीमति) विजय मलिक, निदेशक एवं प्रमुख (पीसीडी)

New Delhi, the 13th February, 2009

S.O. 487.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. and Year and title of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	Amendment No. 1 to IS 15354 2008/ISO 11193 : 1994 Single-use rubber examination gloves-Specification	None	December, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PCD/G-7 (Gazette)]

Dr. (Smt.) VIJAY MALIK, Director & Head (PCD)

नई दिल्ली, 13 फरवरी, 2009

का.आ. 488.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एवम् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	IS 17088 : 2008 कम्पोस्टेबल प्लास्टिक की विशिष्टि	कुछ नहीं	नवम्बर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : पीसीडी जी/-7 (गजट)]

डा. (श्रीमति) विजय मलिक, निदेशक एवं प्रमुख (पीसीडी)

New Delhi, the 13th February, 2009

S.O. 488.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and Year and Title of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 17088:2008 Specification for compostable plastics	None	November, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PCD/G-7 (Gazette)]

Dr. (Smt.) VIJAY MALIK, Director & Head (PCD)

नई दिल्ली, 13 फरवरी, 2009

का.आ. 489.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
2	आई एस 13010 : 2002 की संशोधन संख्या 2, एसी वाट-हॉवर मीटर, श्रेणी 0.5, 1 और 2 (पहला पुनरीक्षण)	02, जनवरी 2009	04-02-2009

इस भारतीय संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 13/टी-34]

प्रकाश बच्चानी, वैज्ञ.-ई एवं प्रमुख (विद्युत तकनीकी वि.)

New Delhi, the 13th December, 2009

S.O. 489.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the amendments	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
2	IS 13010 : 2002 AC watt-hour meters, Class 0.5, 1 and 2 (First Revision)	02, January 2009	04-02-2009

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 13/T-34]

PRAKASH BACHANI, Sc.-E & Head (Electrotechnical Department)

नई दिल्ली, 13 फरवरी, 2009

का.आ. 490.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 10658 : 1999	संशोधन संख्या 7, जनवरी 2009	3 फरवरी, 2009
2.	आई एस 15493 : 2004	संशोधन संख्या 1, दिसम्बर 2008	31 दिसम्बर, 2008
3.	आई एस 15517 : 2004	संशोधन संख्या 2, जनवरी 2009	31 जनवरी, 2009

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 13th February, 2009

S.O. 490.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that Amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 10658 : 1999	Amendment No. 7, January 2009	3 February, 2009
2.	IS 15493 : 2004	Amendment No. 1, December 2008	31 December, 2008
3.	IS 15517 : 2004	Amendment No. 2, January 2009	31 January, 2009

Copy of this Amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc. 'F' & Head (Civil Engg.)

नई दिल्ली, 13 फरवरी, 2009

का.आ. 491.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्र. सं.	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15821 : 2008 गैसीय अग्नि शमन पद्धतियाँ—भौतिक गुणधर्म और प्रणाली अभिकल्पना—सी एफ, आई शमन पद्धतियाँ	—	31 अक्टूबर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, पुणे, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 13th February, 2009

S.O. 491.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 15821 : 2008 Gaseous fire extinguishing systems—Physical properties and system design CF,I extinguishant	—	31 October, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc. 'F' & Head (Civil Engg.)

नई दिल्ली, 17 फरवरी, 2009

का.आ. 492.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :—

अनुसूची

क्र. सं.	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आईएस 61511-2: 2003 कार्यात्मक सुरक्षा—प्रक्रम उद्योग क्षेत्र के लिए सुरक्षा मापयंत्रण तंत्र भाग 2 आई ई सी 61511-1 के अनुप्रयोग के दिशानिर्देश	—	30 अक्टूबर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 18/टी-116]

प्रकाश बचानी, वैज्ञानिक 'ई' एवं प्रमुख (विद्युत तकनीकी वि.)

New Delhi, the 17th February, 2009

S.O. 492.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & Year of the Indian Standards, if any Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS/IEC 61511-2 : 2003 Functional Safety-Safety Instrumented Systems for the Process Industry Sector Part 2 Guidelines for the applications of IEC 61511-1	—	30 October, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 18/T-116]

PRAKASH BACHANI, Sc. 'E' & Head (Electrotechnical Department)

नई दिल्ली, 18 फरवरी, 2009

का.आ. 493.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्र. सं.	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 14700 (भाग 3/अनुभाग 2) : 2008 आईईसी 61000-3-2 : 2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 3 सीमाएँ अनुभाग 2 संसगत धारा उत्सर्जन की सीमा (उपस्कर निवेश धारा ≤ 16 ए प्रति फेज) (प्रथम पुनरीक्षण)	—	मई 2008
2.	आईएस 14700 (भाग 4/अनुभाग 1) : 2008 आईईसी 61000-4-1 : 2006 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 1 आई ई सी 61000-4 सीरीज का अवलोकन (प्रथम पुनरीक्षण)	—	मई 2008
3.	आईएस 14700 (भाग 4/अनुभाग 2) : 2008 आईईसी 61000-4-2 : 2001 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 2 वैद्युत-स्थैतिक उत्सर्जन प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	मई 2008

(1)	(2)	(3)	(4)
4.	आईएस 14700 (भाग 4/अनुभाग 9) : 2008 आईईसी 61000-4-9 : 2001 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 9 पल्स चुम्बकीय क्षेत्र प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	मई 2008
5.	आईएस 14700 (भाग 4/अनुभाग 15) : 2008 आईईसी 61000-4-15 : 2003 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 15 फिलिक्रीमीटर-कार्यात्मक एवं डिजाइन विशिष्टियाँ (पहला पुनरीक्षण)	—	मई 2008
6.	आईएस 14700 (भाग 6/अनुभाग 1) : 2008 आईईसी 61000-6-1 : 2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 6 सामान्य मानक अनुभाग 1 आवासीय, व्यापारिक और सरल औद्योगिक वातावरण के लिए प्रतिरक्षा	—	मई 2008
7.	आईएस 4545 (भाग 2) : 2008 टेलिविजन प्रसारण ट्रांसमिशन के लिये रिसीवर मापन की पद्धतियाँ भाग 2 ट्यूनिंग के गुणधर्म और सामान्य अपेक्षाएँ (दूसरा पुनरीक्षण)	—	जून 2008
8.	आईएस 4545 (भाग 1) : 2008 टेलिविजन प्रसारण ट्रांसमिशन के लिये रिसीवर मापन की पद्धतियाँ भाग 1 सामान्य प्रयोजन (दूसरा पुनरीक्षण)	—	जुलाई 2008
9.	आईएस 14700 (भाग 3/अनुभाग 3) : 2008 आईईसी 61000-3-3 : 2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 3 सीमाएँ अनुभाग 3 प्रति फेज 16 ए इससे कम रेटिट धारा के उपस्कर के लिए तथा सराई (प्रथम पुनरीक्षण)	—	जुलाई 2008

इन भारतीय मानकों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एलटीडी/जी 75]

रीना गर्ग, प्रमुख (एल आई टी डी)

New Delhi, the 18th February, 2009

S.O. 493.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standards, if any, superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 14700 (Part 3/Sec 2) : 2008 IEC 61000-3-2 : 2005 Electromagnetic Compatibility (EMC) Part 3 Limits Section 2 Limits for Harmonic Current Emissions (Equipment Input Current ≤ 16 A per Phase) (First Revision)	—	May, 2008

(1)	(2)	(3)	(4)
2.	IS 14700 (Part 4/Sec 1): 2008 IEC 61000-4-1: 2006 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 1 Overview of IEC 61000-4 Series (First Revision)	—	May 2008
3.	IS 14700 (Part 4/Sec 2): 2008 IEC 61000-4-2: 2001 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 2 Electrostatic Discharge Immunity Test (First Revision)	—	May 2008
4.	IS 14700 (Part 4/Sec 9): 2008 IEC 61000-4-9: 2001 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 9 Pulse Magnetic Field Immunity Test (First Revision)	—	May 2008
5.	IS 14700 (Part 4/Sec 15): 2008 IEC 61000-4-15: 2003 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 15 Flickermeter — Functional and Design Specifications (First Revision)	—	May 2008
6.	IS 14700 (Part 6/Sec 1): 2008 IEC 61000-6-1: 2005 Electromagnetic Compatibility (EMC) Part 6 Generic Standards Section 1 Immunity for Residential, Commercial and Light-Industrial Environments	—	May 2008
7.	IS 4545 (Part 2): 2008 Methods of Measurement on Receivers for Television Broadcast Transmissions Part 2 Tuning Properties and General Measurements (Second Revision)	—	June 2008
8.	IS 4545 (Part 1): 2008 Methods of Measurement on Receivers for Television Broadcast Transmissions Part 1 General Considerations (Second Revision)	—	July 2008
9.	IS 14700 (Part 3/Sec 3): 2008 IEC 61000-3-3: 2005 Electromagnetic Compatibility (EMC) Part 3 Limits Section 3 Limitation of Voltage Changes, Voltage Fluctuations and Flicker in Public Low-Voltage Supply Systems, for Equipment with Rated Current \leq 16 A per Phase and not Subject to Conditional Connection (First Revision)	—	July 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: LTD/G-75]
REENA GARG, Head (LITD)

नई दिल्ली, 18 फरवरी, 2009

का.आ. 494.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्र. सं.	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 1885 (भाग 84) : 2008 आईईसी 60695-4 : 2005 विद्युत तकनीकी शब्दावली भाग 84 विद्युत तकनीकी उत्पादों के अग्नि परीक्षण से संबंधित शब्दावली (प्रथम पुनरीक्षण)	—	सितम्बर 2008
2.	आईएस 9000 (भाग 4) : 2008 आईईसी 60695-2-78 : 2001 इलेक्ट्रॉनिक एवं विद्युतीय मदों के लिए आधारभूत पर्यावरण परीक्षण प्रक्रिया भाग 4 नमूना (स्थाई अवस्था) (प्रथम पुनरीक्षण)	—	सितम्बर 2008
3.	आईएस 11000 (भाग 2/अनुभाग 1) : 2008 आईईसी 60695-2-10 : 2000 अग्नि जोखिम परीक्षण भाग 2 परीक्षण विधियाँ अनुभाग 1 चमकीला- तार उपकरण एवं सामान्य परीक्षण प्रक्रिया (प्रथम पुनरीक्षण)	—	सितम्बर 2008
4.	आईएस 11000 (भाग 2/अनुभाग 2) : 2008 आईईसी 60695-11-5 : 2004 अग्नि जोखिम परीक्षण भाग 2 परीक्षण विधियाँ अनुभाग 2 सुई ज्वाला परीक्षण विधि-उपकरण पुष्टि परीक्षण व्यवस्था एवं मार्गदर्शिका (प्रथम पुनरीक्षण)	—	अक्टूबर 2008
5.	आईएस 14700 (भाग 4/अनुभाग 3) : 2008 आईईसी 61000-4-3 : 2006 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 3 विकिरण, रेडियो आवृत्ति विद्युत-चुम्बकीय प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	सितम्बर 2008
6.	आईएस 14700 (भाग 4/अनुभाग 8) : 2008 आईईसी 61000-4-8 : 2001 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 8 पावर आवृत्ति चुम्बकीय क्षेत्र प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	सितम्बर 2008

(1)	(2)	(3)	(4)
7.	आईएस 14700 (भाग 4/अनुभाग 12) : 2008 आईईसी 61000-4-12 : 2006 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 12 चल्य तरंग प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	सितम्बर 2008
8.	आईएस 14700 (भाग 4/अनुभाग 16) : 2008 आईईसी 61000-4-16 : 2002 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 16 0 हर्ट्ज से 150 किलो हर्ट्ज तक के आवृत्ति रेंज में सामान्य तरीके से व्यवधानों को उत्पन्न करने हेतु प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	सितम्बर 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, पुणे, कोयंबूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एलटीडी/जी-75]

रीना गर्ग, प्रमुख (एल आई टी डी)

New Delhi, the 18th February, 2009

S.O. 494.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standards, if any superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 1885 (Part 84) : 2008 IEC 60695-4 : 2005 Electrotechnical Vocabulary Part 84 Terminology Concerning Fire Tests for Electrotechnical Products (First Revision)	—	September 2008
2.	IS 9000 (Part 4) : 2008 IEC 60068-2-78 : 2001 Basic Environmental Testing Procedures for Electronic and Electrical Items Part 4 Damp Heat (Steady State) (First Revision)	—	September 2008
3.	IS 11000 (Part 2/Sec 1) : 2008 IEC 60695-2-10 : 2000 Fire Hazard Testing, Part 2 Test Methods Section 1 Glow-Wire Apparatus and Common Test Procedure (First Revision)	—	September 2008
4.	IS 11000 (Part 2/Sec 2) : 2008 IEC 60695-11-5 : 2004 Fire Hazard Testing, Part 2 Test Methods Section 2 Needle-Flame Test Method- Apparatus, Confirmatory Test Arrangement and Guidance (First Revision)	—	October 2008

(1)	(2)	(3)	(4)
5.	IS 14700 (Part 4/Sec 3): 2008 IEC 61000-4-3: 2006 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 3 Radiated, Radio Frequency, Electromagnetic Field Immunity Test (First Revision)	—	September 2008
6.	IS 14700 (Part 4/Sec 8): 2008 IEC 61000-4-8: 2001 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 8 Power Frequency Magnetic Field Immunity Test (First Revision)	—	September 2008
7.	IS 14700 (Part 4/Sec 12): 2008 IEC 61000-4-12: 2006 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 12 Ring Wave Immunity Test (First Revision)	—	September 2008
8.	IS 14700 (Part 4/Sec 16): 2008 IEC 61000-4-16: 2002 Electromagnetic Compatibility (EMC) Part 4 Testing and Measurement Techniques Section 16 Test for Immunity to Conducted, Common Mode Disturbances in the Frequency Range 0 Hz to 150 kHz (First Revision)	—	September 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkatta Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: LTD/G-75]
REENA GARG, Head (LTD)

नई दिल्ली, 19 फरवरी, 2009

का.आ. 495.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्र. सं.	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आईएस 513 : 2008 अतप्त लघुकृत अल्प कार्बन इस्पात की चादर एवं पत्ती (पाँचवा पुनरीक्षण)	आईएस 513 : 1994	01-11-2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 4/टी-14]

डॉ (श्रीमति) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 19th February, 2009

S.O. 495.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standards, if any Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 513 : 2008 Cold reduced low carbon steel sheet and strips (fifth revision)	IS 513 : 1994	1st November, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 4/T-14]

DR. (MRS.) SNEH BHATLA, Sc. 'F' & Head (Met Engg.)

नई दिल्ली, 19 फरवरी, 2009

का.आ. 496.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्र. सं.	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आईएस 6240 : 2008 अल्प दाब द्रवणीय गैस सिलिंडरों के निर्माण के लिए तप्त बेहिलित इस्पात की प्लेट (6 मि.मी. तक) चादर एवं पत्ती (चौथा पुनरीक्षण)	आईएस 6240 : 1999	1-10-2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 4/टी-131]

डॉ (श्रीमति) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 19th February, 2009

S.O. 496.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standards, if any Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 6240 : 2008 Hot rolled steel plate (upto 6 mm) sheet and strip for the manufacture of low pressure liquefiable gas cylinders (fourth revision)	IS 6240 : 1999	1st October, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 4/T-131]

DR. (MRS.) SNEH BHATLA, Sc. 'F' & Head (Met Engg.)

नई दिल्ली, 19 फरवरी, 2009

का.आ. 497.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा, अधिसूचित करता है कि अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्र. सं.	संशोधित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आईएस 277 : 2003 जस्तीकृत इस्पात की चदरें (सादी एवं नालीदार)—विशिष्ट (छटा पुनरीक्षण)	संशोधन संख्या 2, अगस्त 2008	8-09-2008

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 4/टी-22]

डॉ (श्रीमति) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 19th February, 2009

S.O. 497.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards (s) amendment (s)	No. & Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 277 : 2003 Galvanized steel sheet (Plain and corrugated) (sixth revision)	Amendment No. 2, August 2008	8th September, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 4/T-22]

DR. (MRS.) SNEH BHATLA, Sc. 'F' & Head (Met Engg.)

नई दिल्ली, 19 फरवरी, 2009

का.आ. 498.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा, अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानकों में संशोधन किया गया है :-

अनुसूची

क्र. सं.	संशोधित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आईएस 5249 : 1992	1, जनवरी, 2009	31 जनवरी, 2009

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 19th February, 2009

S.O. 498.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. & Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 5249: 1992	1, January, 2009	31st January, 2009

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc. 'F' & Head (Civil Engg.)

कोयला मंत्रालय

नई दिल्ली, 23 फरवरी, 2009

का.आ. 499.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन भारत सरकार के कोयला मंत्रालय की जारी की गई अधिसूचना संख्या का.आ. 2852 तारीख 29 सितम्बर, 2008 जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 11 अक्टूबर, 2008 में प्रकाशित की गई थी, के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि या ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में, या उस पर के अधिकार उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केंद्रीय सरकार में निहित हो गए थे;

और, केंद्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, (जिसे इसमें इसके पश्चात् सरकारी, कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिनको केंद्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए तैयार है;

अतः अब, केंद्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि और उक्त भूमि में और उस पर इस प्रकार निहित सभी अधिकार, तारीख 11 अक्टूबर, 2008 से केंद्रीय सरकार में इस प्रकार निहित बने रहने की बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हुए समझे जाएंगे, अर्थात् :—

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत किए गए सभी संदायों की केंद्रीय सरकार को प्रतिपूर्ति करेगी;

2. सरकारी कंपनी द्वारा उपरोक्त शर्त (1) के अधीन, केंद्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण के और ऐसे अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमि में या उस पर के उक्त अधिकारों के लिए या उनके संबंध में जैसे अपीलें आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. सरकारी कंपनी, केंद्रीय सरकार या उसके पदधारियों को, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेंगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केंद्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकारी कंपनी को, केंद्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का, जो केंद्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं, पालन करेगी ।

[सं. 43015/8/2005-पीआरआईडब्ल्यू-1 (जिल्द-II)]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 23rd February, 2009

S.O. 499.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 2852 dated the 29th September, 2008 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 11th October, 2008 issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in and over such lands described in the

Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the South Eastern Coalfields Limited (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby directs that the said lands and the rights in and over the said lands so vested shall, instead of continuing to so vest in the Central Government, be deemed to have been vested in the said government company with effect from the 11th day of October, 2008 subject to the following terms and conditions, namely:—

(1) the said Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as may be determined under the provisions of the said Act;

(2) a Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the said Government company under condition (1) above and all expenditure incurred in connection with any such Tribunal and persons appointed to assist such Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc., for or in connection with the rights in or over the said lands so vested shall also be borne by the said Government company;

(3) the said Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested;

(4) the said Government company shall have no power to transfer the said lands to any other person without the previous approval of the Central Government; and

(5) the said Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[No. 43015/8/2005-PRJW-I (Vol.-II)]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 23 फरवरी, 2009

का.आ. 500.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 859, तारीख 10 अप्रैल, 2008 जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 19 अप्रैल, 2008 में प्रकाशित की गई थी, के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि या ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में, या उस पर के सभी अधिकार उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विस्तरों से मुक्त होकर, आत्यंतिक रूप से केंद्रीय सरकार में निहित हो गए थे;

और, केंद्रीय सरकार को यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों, जो केंद्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए राजामंद है;

अतः अब, केंद्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि और उक्त भूमि में और उस पर इस प्रकार निहित सभी अधिकार, तारीख 19 अप्रैल, 2008 से केंद्रीय सरकार में इस प्रकार निहित बने रहने की बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हुए समझे जाएंगे, अर्थात्:—

1. उक्त सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत किए गए सभी संदायों की प्रतिपूर्ति केंद्रीय सरकार को करेगी;

2. उक्त कंपनी द्वारा उपरोक्त शर्त (1) के अधीन, केंद्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और ऐसे अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमि में या उस पर के उक्त अधिकारों के लिए या उनके संबंध में जैसे अपीलें आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. उक्त सरकारी कंपनी, केंद्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उसके अधिकारों के बारे में, केंद्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकारी कंपनी को, केंद्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का, जो केंद्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं, पालन करेगी।

[सं. 43015/3/2005-पीआरआईडब्ल्यू-1]

एम. शाहाबुद्दीन, अवर सचिव

New Delhi, the 23rd February, 2009

S.O. 500.—Whereas, on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 859 dated the 10th day of April, 2008 published in the Gazette of India, Part II, Section 3, sub-section (ii) dated the 19th day of April, 2008 issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in and over such lands described in the Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And, whereas, the Central Government is satisfied that the South Eastern Coalfields Limited (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby directs that the said lands and the rights in and over the said lands so vested shall, instead of continuing to vest in the Central Government, be deemed to have been vested in the said Government company with effect from 19th day of April, 2008 subject to the following terms and conditions namely :—

(1) the said Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as may be determined under the provisions of the said Act;

(2) a Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the said Government company under condition (1) above and all expenditure incurred in connection with any such Tribunal and persons appointed to assist such Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc., for or in connection with the rights in or over the said lands so vested shall also be borne by the said Government company;

(3) the said Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested;

(4) the Government company shall have no power to transfer the said lands to any other person without the previous approval of the Central Government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[No. 43015/3/2005-PR1W-I]

M. SHAHABUDEEN, Under Secy.

शहरी विकास मंत्रालय

(दिल्ली प्रभाग)

नई दिल्ली, 25 फरवरी, 2009

का.आ. 501.—राष्ट्रीय राजधानी क्षेत्र दिल्ली विधान सभा द्वारा उनका निर्वाचन किए जानेके अनुसरण में, केन्द्र सरकार, दिल्ली विकास अधिनियम, 1957 (1957 का 61) की धारा 3 की उप-धारा (3) के खण्ड (च) के साथ पठित उप-खण्ड (1) के प्रावधानों के अनुसार सर्वश्री सुभाष चोपड़ा, नसीब सिंह और डा. हर्षवर्धन विधायक को तत्काल प्रभाव से दिल्ली विकास प्राधिकरण में सदस्य के रूप में नामित करती है।

[सं. के-11011/21/2009-डीडी-1ए]

एन. टी. जोसेफ, अवर सचिव

MINISTRY OF URBAN DEVELOPMENT

(Delhi Division)

New Delhi, the 25th February, 2009

S.O. 501.—Pursuant to their election by the Legislative Assembly of the National Capital Territory of Delhi, the Central Government in accordance with the provisions of sub-section (1) read with clause (f) of sub-section (3) of Section 3 of the Delhi Development Act, 1957 (61 of 1957), hereby nominates S/Shri Subhash Chopra, Naseeb Singh and Dr. Harsh Vardhan, MLAs as Members of the Delhi Development Authority with immediate effect.

[No. K-11011/21/2009-DD-1A]

N. T. JOSEPH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 जनवरी, 2009

का.आ. 502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एस.सी.सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गोदावरीखनी के पंचाट (संदर्भ संख्या 26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-2009 को प्राप्त हुआ था।

[सं. एल-22013/1/2009-आईआर(सी- II)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th January, 2009

S.O. 502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2006) of the Industrial Tribunal, Godavarikhani as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 30-01-2009.

[No. L-22013/1/2009-IR(C-II)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GODAVARIKHANI**Present: Sri M. Shanmugam, B.Com, B.L.,
Chairman-cum-Presiding Officer

Tuesday, The 6th Day of January, 2009.

Industrial Dispute No. 26 of 2006.

Between :

Adepu Madanaiah, S/o. Venkati, 47 years,
E.C.No.0925666, Ex. Coal Filler,
H. No.7-5-245, PO: Godavarikhani,
Dist. Karimnagar-505 209 (AP).

--- Petitioner

And

1. The Colliery Manager, GDK.No.6 Incline, Singareni Collieries Co.Ltd., RG-I, PO: Godavarikhani, Dist. Karimnagar.
2. The General Manager, Singareni Collieries Co. Ltd., Ramagundam Area-I, PO: Godavarikhani, Dist Karimnagar.
3. The Chairman & Managing Director, Singareni Collieries Co.Ltd., PO : Kothagudem, Dist Khammam.

--- Respondents

This Industrial Dispute petition U/Sec. 2-A (2) of I.D. Act, coming on before me for final hearing on 29-12-2008, upon perusing all the documents on record and upon hearing the arguments of Sri B. Amarender Rao, Advocate, for the petitioner and Sri D. Krishna Murthy, Standing Counsel for the respondents, having stood over for consideration till this date, the court passed the following:

AWARD

1. This petition is filed U/Sec. 2-A (2) of I.D. Act, by the petitioner, the petitioner Ex-Coal Filler prays this Court may be pleased to set aside the office order dt 24-08-2001 passed by the 2nd respondent and direct the respondents' company to reinstate the petitioner into service, with continuity of service, all other consequential benefits and full back wages, to meet the ends of justice.

2. The averments of the petition filed by the petitioner are as follows :—

The petitioner submits that the respondents' company appointed him as Badli Filler in the year 1983. Due to his efficient services, he was promoted as Coal Filler on 30-5-1988 and his services were also confirmed as Coal Filler on 25-09-1988. The petitioner serve the respondents' company for more than 18 years to the utmost satisfaction of his superiors, with any adverse remarks whatsoever. That from 1983 till 1999, he attended to his duties promptly and regularly. He had put in more than 250 physical musters every year. During the year 2000, he suffered from serious ill health, severe and continuous stomach pain. He underwent prolonged treatment in the respondents' company hospitals, private hospitals and was also referred to NIMS hospital at Hyderabad. Even then, he could not recover his health and could not attend to his duties normally. The 1st respondent issued charge sheet dt.18-01-2001 alleging that :

"He had remained absent to his duties for 47 days during the year 2000, without leave or without sufficient cause."

3. The petitioner submitted his satisfactory explanation on 5-2-2001. But on the same day enquiry notice was issued to him and his enquiry statement was obtained on 7-2-2001 itself. That the petitioner under went treatment in the respondents' company hospitals and was granted sick leave during the year 2000 for the periods as under:—

Period of sickness	Fit Certificate No.
03-04-2000 to 26-05-2000	871, OP No.969
18-09-2000 to 27-09-2000	8800, OP No.3895
08-11-2000 to 17-11-2000	8892, OP No.4565
04-12-2000 to 15-12-2000	8936, OP No.5012
18-12-2000 to 28-12-2000	8957, OP No.5181

That besides the above treatment in the company hospitals, the petitioner was also compelled to take effective treatment in private hospitals and also in the NIMS Hospital at Hyderabad. Thus, there is reasonable and sufficient cause for the absence of the petitioner for 47 days mentioned in the charge sheet and also for his 57 actual musters during 2000 year. The petitioner deposed his real and actual problems during enquiry also. The enquiry officer also clearly and categorically held as under: It is clear that due to ill health during the year 2000 the charge sheeted workman was forced to put meager musters i.e., 57 during the entire year 2000, which is established.

4. Therefore it cannot be said that the petitioner had absented for the 47 days mentioned in the charge sheet, without any sufficient cause. There is any amount of reasonable and sufficient cause for the alleged absence of the petitioner. For all the long spells other than the 47 days mentioned in the charge sheet, the petitioner admittedly took prior permission and under went treatment in company's hospitals also. Thus, the serious ill health of the petitioner and his under going prolonged treatment was amply proved. Hence, it cannot be termed as misconduct. That the 2nd respondent issued a notice along with enquiry proceedings, requiring the petitioner to submit his representation. The petitioner gave his representation and assurance on 11-06-2001. The 2nd respondent kept the petitioner under observation for 6 months from 01-07-2001, but all of a sudden, issued office order on 24-08-2001 dismissing the petitioner from service w.e.f., 26-08-2001. It is highly arbitrary, unjust and illegal.

5. That domestic enquiry was not conducted fairly and properly. Further, the findings of the enquiry officer are highly perverse and biased. Fair opportunity was not given to the petitioner to defend himself. The enquiry officer did not properly appreciate the documentary evidence produced by the petitioner. The entire proceedings were recorded in English language, not known the petitioner an illiterate. His thumb impressions were obtained under the threat of insubordination. Hence, it is prayed that this court may be pleased to hold the enquiry as invalid and vitiated. That the dismissal order was issued to the petitioner straight away, without issuing any kind of show cause notice proposing the aid capital punishment of dismissal. It is against the mandatory/statutory provisions and contrary to the principles of natural justice.

6. Further the aid extremely harsh punishment of dismissal from service is highly excessive and shockingly disproportionate to the gravity of the alleged charge levelled against the petitioner. It amounts to economic death of the petitioner. It is not at all warranted and is liable to be quashed by this court. His long and efficient service of more than 18 years was not at all considered by the respondent, before imposing the capital punishment. That ever since his unjust dismissal from service w.e.f., 26-08-2001 the petitioner could not secure any other alternative job. He remained unemployed and incurred huge debts for medical and domestic expenses of his large family. He faced lot of hardship and misery to eke out livelihood for all his family. He was compelled to take his provident fund and service amounts from the company to meet his

domestic expenses and pay the huge debts. It was essential for his family existence and livelihood.

7. That this court has got every jurisdiction to try the case U/Sec.2-A(2) of I.D. Act as per the settled law declared by the Hon'ble High Court and Apex Court. That the petitioner did not file any civil or criminal case in this regard before any other court or authority, except the present I.D. before this court. That this court has got wide powers vested U/Sec.11-A of I.D. Act to quash the dismissal order and to grant every relief to the poor petitioner. The petitioner prays this court may be pleased to set aside the office order dt.24-08-2001 passed by the 2nd respondent and direct the respondents' company to reinstate the petitioner into service, with continuity of service, all other consequential attendant benefits and full back wages to meet the ends of justice.

8. The averments of the counter filed by the respondent are as follows:—

That it is a Government company incorporated under the provisions of Companies Act, 1956 for carrying out the business of winning and selling the coal. That since the coal mining industry is a central subject the appropriate government for this respondent management is Central Government. The respondent submits that as per S.7A (1) of I.D. Act the appropriate Government may by notification in the Official Gazette constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter whether specified in the 2nd schedule or 3rd schedule and for performing such other functions as may be assigned to them under this Act. That Central Government established an industrial tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of industrial disputes and the petitioner ought to have approached the said tribunal for the redressal of grievance, if any. But the petitioner conveniently avoided to file his petition before the tribunal established by the Central Government for the reasons best known to him. That the petition is not maintainable under law and the same may be dismissed on this ground alone.

9. That the maintainability of the dispute raised by the petitioner before this court may be decided as preliminary issue before proceeding with the trial. That the petitioner failed to exhaust the conciliation procedure as laid down in the I.D. Act and filed the present petition before this tribunal under S.2A(2) of I.D. Act, 1947 as amended by AP Amendment Act, 1987 (Act No.32 of 1987). That as the appropriate Government for coal mining industry is the Central Government the State amendment Act is not applicable to the respondent company and the petition filed by the petitioner is not maintainable under law and is liable to be dismissed in limine. That the petitioner was appointed initially in the respondents' company on 22-09-1983. The averments of the petitioner that due to his efficient services, he was promoted as Coal Filler on 30-5-1988 is denied. That as per rules in vague he was confirmed as coal filler w.e.f. 1-6-1988. The averments of the petitioner that he served the respondent's company for more than 18

years to the utmost satisfaction of his superiors without any adverse remarks is denied and the petitioner dispute to strict proof of the same.

10. The averments of the petitioner that from 1983 to 1999 he attended to his duties promptly and regularly and he had put in more than 250 physical musters every year is denied and the petitioner is put to strict proof of the same. That he had put in only fifty seven musters during the period from January to December, 2000. He had remained absent on the following days during the year 2000 without leave or without sufficient cause.

Month	Absents	Total Absents
January, 2000	6, 7, 13, 25	04 days
March, 2000	8 to 10, 19, 21	05 days
May, 2000	28, 30, 31	03 day
June, 2000	1, 2, 14, 15, 18 to 20, 22, 23, 30	10 days
July, 2000	6m7, 12, 14, 21, 24, 30, 31	08 days
August, 2000	1, 2, 8, 20, 21	05 days
Sept., 2000	3, 14, 15, 28, 29	05 days
Nov., 2000	1, 19, to 21, 26, 27, 30	07 days

As such a charge sheet dt. 18-1-2001 was issued to him under company's standing orders No. 25(25) which reads as follows: "Habitual late attendance or habitual absence from duty without sufficient cause".

He acknowledged the same and submitted an explanation dt. 5-2-2001 which was found not satisfactory. As such an enquiry was ordered vide enquiry notice dt. 4-2-2001 fixing the enquiry on 7-2-2001. The petitioner acknowledged the enquiry notice. He fully participated in the enquiry. He was given full and fair opportunity to defend himself in the enquiry. Before conducting the enquiry the contents of the charge sheet and the enquiry procedure were explained to the petitioner in Telugu the language to which he is acquainted with. He did not opt for defence assistant. He pleaded guilty of misconduct as mentioned in the charge sheet.

11. That the management representative/management witness-1 has deposed that the petitioner has remained absent from duties without sanctioned leave or sufficient cause habitually on a number of days as mentioned in the charge sheet. The management/management representative produced management witness-2 who is also the concerned pay sheet clerk of the petitioner and also produced relevant documents. The MW2 has confirmed the statement of MR and in support of their statement the MW2 produced the attendance registers and pay sheets of the petitioner. The same were verified by the enquiry officer in the presence of the petitioner and found that the absents mentioned in the charge sheet were correct. That the petitioner in his evidence has voluntarily admitted the charge levelled against him. He also stated that due to ill health during the calendar year, 2000 he could not attend for his duties properly so he could put in only 57 actual musters during

the calendar year 2000. He also stated that he had been suffering from severe stomach pain and he had taken treatment in the company's hospital and private hospital and he had also gone to NIMS, Hyderabad. He has also stated that he had taken treatment during the months of April, 2000, May, 2000, September, 2000, November, 2000 and December, 2000 in the company's hospital. In support of his statement he produced the following fit certificates.

Sl. No.	Period of sickness	Company Hospital fit Certificate No.
1	03-04-2000 to 26-05-2000	871, O.P.No.969
2	18-09-2000 to 27-09-2000	8800, O.P.No.3895
3	08-11-2000 to 17-11-2000	8892, O.P.No.4565
4	04-12-2000 to 15-12-2000	8936, O.P.No.5012
5	18-12-2000 to 28-12-2000	871, O.P.No.5181

12. That the petitioner has assured the management for his future attendance and stated that this time as first and last chance. He pleaded guilty of misconduct as mentioned in the charge sheet. That the period of sickness as mentioned above is not covered in the absence period as charged in the charge sheet. As such the evidence produced by the petitioner is not supported the charge levelled against him. Hence, the charges levelled against the petitioner were proved. That a show cause notice dt. 13-5-2001 along with copies of enquiry proceedings and enquiry report was served to the petitioner advising him to make representation if any within 7 days of receipt of the notice. He submitted a representation dt. 11-6-2001 requesting the management to give him one more chance under humanitarian grounds to prove his regularity. In consideration of his request an opportunity was given to him advising him to put in at least 20 musters in every month with a filling performance of 2 tubs per muster on an average by keeping his performance under observation for a period of 6 months from 01-7-2001 vide letter No. P.Rg./32A/4073, dt. 11-7-2001.

13. After submission of his above representation dt. 11-6-2001 also he had not attended for duty. As such the above letter was sent to his last known address by Regd. Post with Ack. Due and the same was returned undelivered by the postal authorities with an endorsement that the addressee is not available during the period from 16-7-2001 to 23-7-2001 hence returned. In view of the above the management was constrained to dismiss the petitioner from the service w.e.f. 26-8-2001 vide office order dt. 24-8-2001. That the averments of the petitioner that the domestic enquiry was conducted fairly and properly is denied. Further averment of the petitioner that the findings of enquiry officer are highly perverse and biased is denied and the petitioner is put to strict proof of the same. Further averment of the petitioner that fair opportunity was not given to the petitioner to defend himself is denied. The enquiry officer properly appreciated the documentary evidence produced by the petitioner in the enquiry. The documentary evidence produced by the petitioner is not supported the charge levelled against the petitioner. Regarding the recording of the entire proceedings in English language, the petitioner

did not object to record the enquiry proceedings in English language at any point of time. However, all the contents of the enquiry proceedings were recorded in the presence of the petitioner and explained to him in Telugu the language to which he is acquainted with and he put his thumb impression as a token of his understanding and acceptance. That this court may decide the validity of the domestic enquiry as a preliminary issue and permit this respondent to lead evidence if this court comes to a conclusion that the domestic enquiry is not valid.

14. That he had put in only 57 days of attendance in the year 2000. After issuing the charge sheet also he did not improve his attendance in the year 2001. He had put in only 14 days attendance in the year 2001 upto the date of dismissal i.e. upto 26-8-2001. That the respondents' company employs more than 83,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the over all attendance and performance of each and every individual. They are inter-linked and inseparable. In this regard if anyone remains absent, without prior leave or without any justified cause, the work to be performed gets effected. Such unauthorised absence creates sudden void, which at time is very difficult to fill-up and there will be no proper planning and already planned schedules gets suddenly disturbed without prior notice. That is the reason why the respondents' company is compelled to take severe action against the unauthorised absentees. In the instant case, the petitioner is one such unauthorised absentee having only 57 days attendance in the year 2000 and he has not improved his attendance and work performance after issuing the charge sheet. He had failed to avail one more opportunity given to him. With the advent and implementation of new industrial and economic policies by the Central/State Governments as well as the company, the company cannot go on employing the persons who are chronic absentees, who are a burden to the company. As such, the respondents' company was constrained to dismiss the petitioner for unauthorised absenteeism w.e.f. 26-8-2001 vide order dt. 24-8-2001. It is therefore prayed that the petition may be dismissed with costs, for which act of justice the respondents shall ever pray. Heard oral arguments on both sides.

15. With regard to documents filed by both the sides as per the docket step shows dt. 26-05-2008 for the petitioner documents he filed the xerox copies without attestation the same was returned take steps for originals and also court fee stamps are not affixed on the xerox copies of the documents by the petitioner. The petitioner has not at all resubmitted. On 8-9-2008 the docket step shows the petitioner took 21 adjournments, the petitioner and his counsel best reasons known to them, refuses, avoided or neglects to attend and participate and co-operate for arguments without good reasons or justification. On that day it was posted on condition if not get ready or report no instructions, the court has no other go except to follow the procedure U/R 24 of AP I.D. Rules in deciding the case on merits, accordingly the petitioner present his counsel absent, the court decided on petitioner side treated as heard arguments. On 1-12-2008 petitioner side filed the reply

arguments by supplying the copy to the otherside. Afterwards this court granted 9 adjournments for reply oral arguments of the petitioner side, the petitioner counsel present and stated posted for award.

16. On behalf of the respondent side filed the documents 1 to 10, the office took objections on the respondent side documents but the petitioner counsel not complied the objections. On 8-9-2008 the petitioner counsel endorsed as no objection to mark the documents. On that day the court directed for the respondent counsel for marking of the relied documents to comply the objections taken by the office, but the respondent counsel not taken the court directed the documents relied on behalf of the respondent side would be marked subject to proof and relevancy and admission and payment of Court fee of Re. 1 on the sued/relied documents. But on 22-09-2008 the respondent counsel requested time for filing written arguments. On 29-09-2008 the respondent filed the written arguments with citations without taking steps for marking of documents as per the procedure.

17. The respondent counsel simply filed the written arguments by stating the objections taken by the office in para No. 5, pages 2 to 4 without mark the documents as per the procedure, the B.C., also not put-up any note about the complying/non-complying of objections simply put-up note received on file, hence it is received.

18. From the respondents counsel argument with regard to documents, there is no dispute as the petitioner filed the memo U/Sec. 11-A of the I.D. Act, the petitioner is not challenged the validity of the domestic enquiry conducted by the respondent and prayed the court to decide the quantum of relief of punishment to which the petitioner is entitled on the basis of evidence on record U/Sec. 11-A of the I.D. Act. The disputed fact between both the parties is only with regard to the medical certificates and fitness certificates stated in the enquiry proceedings report though admitted but the same was not filed into the court and marked as per the procedure.

19. On behalf of the petitioner side the following two cited decisions (xerox) reported as follows :—

No. 1—In the High Court of judicature of Andhra Pradesh at Hyderabad in W.P. No. 1864 and 1901/2001, dt. 19-12-2001, between Bharat Heavy Electricals Ltd., Vrs., P.O., Labour Court, and others, reported in 2002(1) AL T-151 (D. B.) - U/Sec 11-A of the I.D. Act, scope of power of Labour Court without limitation, Labour Court while holding that charges stood proved can interfere with punishment if it is disproportionate to the proved guilty by giving reasons.

No. 2—In the Supreme Court of India in CLP Civil No. 7437/1988, dt. 30-09-1988, between Scooter India Ltd. Vrs. Labour Court and others, reported no details - Single page 303 xerox copy filed Labour Notes, Supreme Court—Industrial Disputes Act Sec. 2(A) scope of wide powers are vested in Labour Court or Tribunal, Labour Court can tamper justice with mercy and given an opportunity to an erring workman from himself.

20. On behalf of the respondent side the following single cited decision (xerox) reported as follows :—

In the High Court of judicature of Andhra Pradesh at Hyderabad in W.P. No. 30036/1995, dt. 06-12-2001, between Thimmaiah Vrs. Industrial Tribunal-cum-Labour Court, Hyderabad and another, reported in 2002(1) ALD-314 (D.B.)-Industrial Disputes Act, Sec.2(oo)(bb) and Sec. 25(F). Termination from service on the ground of continuous absence from duty under the standing orders does not amount to retrenchment. When such order of termination was not after giving notice to the employee not liable to be challenged.

21. Before going into the merits of the case, I would like to submit how this case was delayed. This petition-claim statement was filed on 02-03-2006, U/Sec.2 (A) 2 of the I.D. Act, being aggrieved by the order of dismissal passed by the respondent-management vide Proc., dt. 24-08-2001, and it was checked and numbered on 22-03-2006. It was posted by issuing notice to respondent side through RPAD on 19-04-2006. On behalf of the respondent side, Sri D. Krishna Murthy, Advocate, filed vakalat on 16-05-2006. On 15-06-2006 Sri B. Amarendra Rao, Advocate filed the vakalat, petition U/Sec. 36(4) leave granted as other side consented. Posted for counter and documents. On 20-11-2006, R-2 filed counter. Memo filed by R-1 & R-3 adopting the counter of R-2. On 17-11-2006 the petitioner counsel filed the memo U/Sec.11-A of the I.D. Act as the petitioner is not challenging the validity of the domestic enquiry conducted by the respondent and prayed the court to decide the quantum of punishment he is entitled on the basis of the evidence available on record. Posted for arguments on 7-1-2008. On 8-9-2008, petitioner side treated as heard the arguments. On 29-9-2008 respondent filed the written arguments and posted for reply on 13-10-2008. On 29-12-2008, petitioner counsel present and stated posted for award.

22. Heard the arguments advanced by the learned counsel appearing for respective parties. I have perused the contents of the claim statement and counter allegations together with all other documents filed into the court and material available on record. I have also taken into consideration the various points raised by the respondent counsel during the course of the arguments. The petitioner side arguments treated as heard. Respondent side filed the written arguments. Petitioner side filed the reply arguments. Having seen the entire material available on record and the facts and circumstances of the case, the following charge framed against the petitioner in this case arises for consideration. The petitioner for having remained absent on number of days without leave or without sufficient cause during the year 2000 from January to November put in only 57 musters (it was wrongly noted as per the charge-sheet calculation it comes only 47 days). It indicates that the petitioner is in the habit of absents from work frequently. It amounts to misconduct under company standing orders No. 25.25 which reads as follows. Habitual late attendance or habitual absence from duty without sufficient cause.

23. Being aggrieved by the dismissal order issued by the respondent against the petitioner, the petitioner filed this I.D., U/Sec.2-A(2) of the I.D. Act, challenging the

dismissal order directing the respondent to reinstate the petitioner into service with back wages and other attendant benefits etc. In support of the petitioner, the petitioner workman has filed an affidavit petition, he has narrated all the facts and circumstances that he was forced to file this petition and requested the court to allow this petition as prayed for.

24. On behalf of the petitioner side reply arguments filed as follows. The petitioner served in the respondent company from the year 1983 to 3-2-2001 for a period of 18 years and maintained the best attendance upto the year 2000. The petitioner suffered from serious ill-health severe and continuous stomach pain. He underwent prolonged treatment in the respondent company hospital and private hospitals and infact, the respondent company referred him to the NIMS hospital at Hyderabad. The petitioner was granted sick leave during the year 2000 for his treatment in the company hospital as follows:—

Sl. No.	Period of sickness	Companay Hospital fit Certificate No.
1.	03-04-2000 to 26-05-2000	871, O.P. No. 969
2.	18-09-2000 to 27-09-2000	8800, O.P. No. 3895
3.	08-11-2000 to 17-11-2000	8892, O.P. No. 4565
4.	04-12-2000 to 15-12-2000	8936, O.P. No. 5012
5.	18-12-2000 to 28-12-2000	871, O.P. No. 5181

There is a reasonable and sufficient cause for the alleged absence of the petitioner for 47 days during the year 2000. Due to misplace of some of the O.P., fitness certificates, the petitioner submitted only 5 above certificates to the respondent company and the enquiry officer also clearly held that due to ill health the petitioner was forced to put meager musters in the year 2000. The petitioner served 18 long years without any remarks, this is the very first dismissal from the service of the petitioner as the petitioner was not inflicted with any other punishments prior to this case.

25. The petitioner counsel reply argument 2nd respondent imposed the capital punishment of dismissal from service without issuing any show cause notice to the petitioner as it is mandatory. As per the guidelines and standing orders/MOS the respondents ought to have given family counselling to the petitioner giving 3 to 6 months observation period, but it was not done in this case. Thus it is a clear case of unfair labour practice and victimisation. The petitioner counsel cited the ruling No. 1 2002 (1) ALD-314, No.2 1998(1) LLN-303. The petitioner counsel prayed the court direct the respondent company to reinstate the petitioner into service with continuity of service and consequential attendant benefits and back wages to meet the ends of justice.

26. For this, respondent standing counsel written arguments filed into the court are as follows. The petitioner was appointed as Badli Filler during the year 1983, charge sheet was issued in the year 2001. The petitioner is habitual absentee, he was absented from duty on a number of days during the year 2000 without prior leave and put up only 57

days of attendance (the days are not correct as per the shown dates of absenteeism it comes only 47). The respondent issued the charge sheet, the petitioner admitted his guilt, domestic enquiry was conducted the documents No. 1 to 10 are filed into the court. The petitioner filed the memo U/Sec. 11-A of the I.D. Act. With regard to quantum of punishment, it is submitted that respondent company excavates and supplies coal to different industries of National importance like APGENCO, NTPC and for that purpose, more than 83,000 persons were employed, if the production and supply of coal is not made in time the work of the coal linked industries will be adversely affected causing National loss. If the workers resort to absenteeism without sufficient cause and prior leave and if it is not checked by stern action the respondent cannot achieve targets in production and supply of coal which would result in National loss. Therefore the respondent viewed unauthorised absence seriously and described as it is a misconduct as per the certified standing orders. The respondent to facilitate the workers in case of ill health the respondent has established his own hospitals where free treatment is given to the employees and their dependents. In case of necessity one will be referred to Super Speciality Hospital for better treatment. In spite of this the petitioner remained absent without prior leave, the respondent has no option but to remove him. Otherwise it creates indiscipline among the hundreds and thousands of its employees. The respondent side cited the decision reported in 2002(1) ALD-314 as discussed above in detail. Hence, respondent prayed this court to dismiss the petition.

27. From the respondent counsel submitted written arguments with regard to the office objections for marking of documents without complying the same at the time of arguments and also not argued for marking of the documents. With regard to respondent filed documents there is no dispute. The dispute is only with regard to the sick leave granted during the year 2000 for his treatment in the company hospital that documents are not filed into the court. That documents are alone disputed in this case. Though it was admitted by the respondent but it was not filed into the court for marking and proof to receive in evidence.

28. From both the counsel argument there is no dispute with regard to the absence of the petitioner and the same was also admitted by the petitioner and found by the respondent. The disputed fact is whether the petitioner was absent due to ill health as he underwent prolonged treatment in the respondent company hospital and private hospital and also NIMS hospital at Hyderabad and he was also applied the sick leave. As per the respondent counsel argument the petitioner was absent duties from January to December, 2000 for a period of 47 days as per the petitioner allegation and as per the respondent allegations, it is 57 days. The petitioner stated the reason due to his sick he is unable to attend his duties.

29. 33. The memo filed by the petitioner counsel dt. 17-11-2007, U/Sec. 11-A of the I.D. Act stating that he is not contesting the procedural aspect of enquiry proceedings and its findings report. The petitioner not

contested the legality and fairness of the enquiry proceedings and confined his case only to the conclusions reached by the enquiry officer and request only to consider quantum of lesser punishment. The petitioner therefore prays this court to hear the arguments U/Sec. 11-A of the I.D. Act, with regard to the lesser punishment. The petitioner as per the memo filed the legality and validity of enquiry was not challenged and not questioned therefore this court has exercised the powers U/Sec. 11-A of the I.D. Act to set aside the dismissal order. Whether the punishment of dismissal of the petitioner from service is disproportionate or shockingly severe if so, whether the reinstatement can be ordered with back wages and benefits etc. The only question that remains in this case is whether the punishment imposed is justified in the circumstances and nature of allegations contained in the charge sheet on the proved misconduct for having absented for a period of 47 days without prior leave.

30. The case of the petitioner that he had underwent medical treatment in the respondent's hospital private hospital and also NIMS hospital at Hyderabad. Petitioner also granted the sick leave period in the year 2000, but was absent 47 days without prior leave. The absence of the petitioner habitual without prior intimation and sanction of leave, the failure of the petitioner to attend the duties it is not only causes loss to him in person, but also causes loss to the company and also inconvenience to the industries. This type of attitude of the petitioner motivates other employees also to evade from the duties. Hence, I hold the petitioner is responsible for the charge of unauthorised absenteeism and habitual absenteeism without leave for 47 days and I also agreeing with the findings of the enquiry officer as the petitioner's misconduct the petitioner who by his action or inaction cause financial loss to the company. It is therefore respondent rightly found the guilty of the petitioner in the interest of the company and also to safe guard the industries.

31. Section 11-A of the ID Act, applicability, the Act is a beneficial piece of legislation enacted in the interest of employees. In construing the provisions of Welfare Legislation the court should adopt a beneficent rule of construction. If two constructions reasonably possible, the construction which further the policy and object of the Act and is more beneficial to the employees has to be preferred. Further the object of the Act is to safe guard the service conditions of the employees. The protection given to the workman in industrial law is not for his misconduct but against unlawful dismissal of his services by the management. The right to work is not to be confused with a persons right to misconduct himself in the course of his employment. U/Sec. 11-A of the ID Act, even in case where a Tribunal upholds the finding of misconduct recorded by the management at the domestic enquiry, the Tribunal can interfere with the punishment awarded by the, management and later the same. But in exercising the discretionary powers to interfere with the punishment the discretion should not be exercised in an arbitrary manner, but it should be exercised in a judicial and judicious manner. Before interfering with the punishment imposed by the management the Tribunal must take into consideration all

the relevant facts and can interfere with the punishment imposed by the management only when it comes to the conclusion that the punishment imposed is extremely harsh and unjust and wholly disproportionate to the misconduct proved.

32. The important factor is to be weighed very much by the courts it is well justified to interfere U/Sec. 11-A of the Act, the petitioner service in the company without any remarks. In this case, petitioner worked for a period of 18 years and his absence only due to ill-health. The same is also admitted by the respondent. The number of years of service put by the petitioner may not alone be a relevant factor in awarding lesser punishment, but the Tribunal was not wrong in taking that as one of the factors in making its award. It is well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged. In this case the petitioner was absent without prior leave for a period of 47 days and at the same time respondent-management has not shown that there was any blame worthy conduct of the petitioner during the period of 18 years of service he rendered prior to the date of misconduct. The absence is only due to ill health due to his unability to attend the work, so the extreme penalty of dismissal from service was not justified in the facts and circumstances of the case and the court must interfere.

33. From the petitioner counsel main argument urged with regard to quantum of punishment the order of dismissal from service was harsh shockingly disproportionate and not at all commensurate with the gravity of alleged charge of misconduct levelled against the petitioner as discussed above in detail. The punishment of dismissal order inflicted on the petitioner amounts highly arbitrary and not at all warranted to the present case. In this case the petitioner was appointed as Coal Filler in the year 1983 and he was dismissed in the year 2001 through worked for a period of 18 years in the company without any remarks and this is the 1st time dismissal. This court has got wide powers vested U/Sec. 11-A of the I.D. Act to set aside the dismissal order. Some minor punishment would have been sufficient and it is open to the court to set aside the order of dismissal and direct the respondent to reinstate the petitioner with continuity of service, with all consequential benefits and back wages, as deem fit and proper in the interest of justice. The petitioner requested this court having wide powers vested U/Sec. 11-A of the I.D. Act to set aside dismissal order as the punishment is not proportionate in this case.

34. For this from the respondent counsel argument that the nature of the misconduct as discussed above in detail company employed more than 83,000 workers, if the production and supply of coal is not made in time, the work of the coal linked industries will be adversely affected causing National loss. The counsel further contended that the power of the Labour Court Tribunal to interfere with the quantum of punishment under the powers U/Sec. 11-A of I.D. Act, was limited and when once the charge of misconduct has been found to be proved the Labour Court

Tribunal cannot interfere with the quantum of punishment. In the duly considered domestic enquiry the charge of misconduct found established and therefore he was subjected to major misconduct liable to be punished for dismissal from service. It was clearly established from the evidence the guilt of misconduct is a major punishment. There is no extenuating circumstances to accept the material on record placed by the petitioner. Having burden on the petitioner to prove his case, but the petitioner failed to discharge his burden. It is well established that this court should not mechanically use the words punishment being disproportionate to the charge. This court is required to give reasons as to why the punishment is grossly disproportionate to the discretionary powers cannot be equated with the power of veto. When the petitioner is undoubtedly committed the misconduct as discussed above in detail. In these circumstances, this court cannot take any lenient view by considering the powers U/Sec. 11-A of the I.D. Act, and substitute its own opinion for that of the respondent dismissal order. The main purpose of punishment is to correct the misconduct of the petitioner concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in future and to hold out a warning to the petitioner/employee and to be careful in the company of other employees to hold out a warning to be careful in discharge of their duties, so that they do not expose themselves to similar punishments. Hence, prayed this court to dismiss the claim of the petitioner without granting any relief much less as prayed for in the interest of justice and fair play and deem fit in the circumstances of the case as not to show any sympathy on the petitioner and dismiss the Industrial Dispute.

35. From the respondent counsel argument the discretion can be exercised U/Sec. 11-A of the I.D. Act is available only on the existence of certain parameters like punishment being disproportionate to the gravity of misconduct, so as to disturb the conscience of the court or the existence of any mitigating circumstances which requires the reduction of punishment and also by considering the past record of the petitioner which may persuade this court to reduce the punishment. The court to interfere with the quantum of punishment the discretion has to be used judiciously and not capriciously it should observe that harsh punishment only disproportionate to the charge should be criterion for interference in the absence of any such mitigating factors existing this court cannot by way of sympathy alone exercise the powers U/Sec. 11-A of the I.D. Act, and reduce the punishment.

36. This court arrived at on proper appreciation of evidence made available in the context of the facts and circumstances of the case, there is absolutely no creep in any infirmity or inconsistency nor does the order suffer from any patent error of law or plausibility in approach and not even for lack of opportunity to him, no such error leading to manifest injustice or violation of principle of natural justice, I am satisfied that the findings are based on acceptable evidence and in the absence of any other contra material, I do not find any valid reasons to interfere with the petitioner's misconduct found guilty by the respondent.

37. From both the counsel argument the court must take into consideration all the relevant facts and circumstances and can interfere with the punishment of dismissal order passed by the respondent only when it comes to the conclusion the gravity of misconduct and the punishment imposed is extremely harsh and disproportionate to the proved misconduct. The punishments are two types one is the dismissal shall be awarded for the gravest act of misconduct where involved in a serious misconduct of charge against the petitioner. The 2nd part is the reformable to a misconduct which by itself may not warrant an order of dismissal and may be a ground to take lenient view by giving an opportunity to reform by the petitioner. The number of years of service worked in the company for 18 years by the petitioner.

38. From the Apex Court judgments it has considered the entitlement of the petitioner for back wages when the order of dismissal is set aside, no hard and fast rule can be laid down in regard to the grant of back wages and each case has to be determined on its own facts. It is not a rule of thumb that in every case where reinstatement is ordered the payment of back wages is a natural consequence. I am of the considered view that the dismissal which is set aside by this court is purely by considering the past record and unable to give correct defence and also U/Sec. 11-A of the I.D. Act, such order will not confer an automatic right for the petitioner to claim back wages. In this view of the matter with regard to the principles of grant of back wages, as such a question would eventually far from consideration before this court appears to be having regard to the facts and circumstances of each case. A right in absolute terms cannot be laid down as to in which under what circumstances the back wages can be granted or denied. In this case, the petitioner would not be entitled to back wages when the charge of misconduct has been proved. He cannot be rewarded with back wages without having worked. It should be like showing a thumb to the management although the charge of absenteeism without prior leave for a period of 47 days though worked 18 years without remarks. It should breed indiscipline in the service and the courts cannot be a party to the breed of indiscipline among the employees. The reinstatement of the petitioner with back wages on proved misconduct, it is against the public interest and moreover particularly it would amounts to rewarding misconduct which is not at all the objective of law. Courts need not laid down consider formalities that as far as the award for back wages are concerned and it is only for the petitioner who is given clean chit of charge totally and completely then only the order for back wages is justifiable. The back wages are not to be awarded mechanically as there is a matter of course even in the case where the sympathetic grounds or for variety of reasons reinstatement is ordered and payment of back wages may not be justified because the respondent-

management had to pay the amount throughout the period of time and it is also payable from the income of the company. Grant of back wages is not automatic. The question of determining the entitlement of the petitioner for back wages is concerned the employee has to show that he was not gainfully employed. The initial burden is on him. Afterwards, if he places materials in that regard the management can bring on record materials to rebut the claim. In this case, the petitioner had neither pleaded nor placed any material in that regard.

39. In my considered opinion this court while exercising its jurisdiction vested in it U/Sec. 11-A of the I.D. Act, accordingly considered the question of relating to proportionality involves balance sheet test and necessity test. In this case, the petitioner's only fault committed due to his ill-health unable to attend his duties without prior leave for a period of 47 days though worked for 18 years without any remarks. The petitioner's counsel contention without issuing any show cause notice, dismissed from service as it is mandatory. The petitioner counsel contention cannot be accepted as on perusal of the documents filed by the respondent document No. 6 issued show cause notice to the petitioner, petitioner gave the reply under document No. 7. Respondent also gave an opportunity to the petitioner under document No. 8; afterwards he was dismissed from service. The question of rehabilitation and reformation of petitioner arise in this case as the petitioner's inability to apply the prior leave for his 47 days absence due to ill-health.

40. In this case the petitioner worked in the company for a period of 18 years without any remarks and this is the first dismissal for his absence without prior leave though respondent admitted the petitioner suffered with ill-health and applied the sick leave and it was also granted. The number of years put by the petitioner may not alone be a relevant factors in awarding lesser punishment and it is also taking that as one of the factors in making lesser punishment. The disputed fact in this case is the petitioner's absent for a period of 47 days without prior leave due to his ill-health. It is an admitted fact that the petitioner is ill-health and he has taken treatment in the company hospital, private hospital and also NIMS hospital at Hyderabad. It is also an admitted fact that the petitioner applied the leave during January to November by applying some of the days sick leave in every month and also some of the days absented due to the sick ill-health, but no leave was applied. The respondent though granted the sick leave period but without questioned and objected and not rejected the leave certificate in all the months filed by the petitioner without filing the leave in the subsequent month. It shows the respondent has not questioned and not rejected the sick leave applications and at the same it was granted. While granting the sick leave applications without questioning and objecting the absence period, the petitioner has not taken any steps for applying the leave etc. When once absence was accepted without questioning and all of

the sudden issuing charge-sheet after enquiry dismissal of the petitioner there is a fault on the respondent or a lenient view taken by the respondent. If the respondent would have questioned the petitioner would have definitely apply the leave for the sick period. The absence was not intentional and wilful, it was only due to his ill-health. The conduct of the petitioner cannot permit on extreme penalty of dismissal from service, it is well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the misconduct of charge in this case is only absent without leave for 47 days though subsequent leave applied it was accepted by the respondent without questioning the absence period from the petitioner. Therefore I am satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the court must interfere may lead to an inference the absence was due to ill-health. The petitioner has no *mala fide* intention to absent without reason, but due to ill-health, the same was also admitted by the respondent, to that effect also sick leaves granted. Even though misconduct is proved and gravity has to be imposed the extreme penalty of dismissal was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionate, heavy or excessive. The above are in my opinion mitigating factors which warrant the necessity of regarding a finding that the punishment in this case not proportionate to the proved misconduct. I am of the opinion that the punishment of dismissal is not commensurate with the charge of misconduct levelled against the petitioner and I would say that punishment is not proportionate. In view of that this court came to the conclusion petitioner will be given an opportunity to improve his excellence of performance of his duty, some lesser punishment would have been sufficient and test upon to set aside the dismissal order as it is harsh and not proportionate to the proved charge levelled against him, in exercise of the same, I modify the punishment of dismissal order passed by the respondent into the lesser punishment without back wages.

41. In the result, the punishment order of dismissal of the petitioner Ex-Coal Filler from service by the respondent company *vide* office order dt. 24-8-2001, is set aside and the respondent-management company is directed to reinstate the petitioner into service without back wages. On condition subject to production of medical fitness certificate by the petitioner issued by the medical examination by the respondent company as per the procedure laid down in the standing orders, due to the absenteeism for ill-health, the petitioner not filed fitness certificate to join the duty. Further if the petitioner absented himself from duty without leave or prior intimation or sanction of leave on single occasion during the period of two years, his services may be dismissed as per procedure. The award will come into force after expiry of 30 days from

its Gazette publication. Within 30 days after its publication, the petitioner should approach the respondent by appearing in person or by Regd. Post with Ack. Due or by means of legal notice with a request to issue an order of reinstatement as Coal Filler only without back wages. Otherwise, the petition shall be deemed to have been dismissed and the petitioner need not be reinstated.

Accordingly with this above modification, the award is passed. But in the circumstances, no costs.

Typed to my dictation directly by Typist, corrected and pronounced by me in the open court on this, the 6th day of January, 2009.

M. SHANMUGAM, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE WITNESSES EXAMINE

For Workman:

For Management:

-NIL-

-NIL-

EXHIBITS

For Workman:-

For Management:-

-NIL-

-NIL-

नई दिल्ली, 30 जनवरी, 2009

का.आ 503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं बी.बी.एम. बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 33/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-2009 को प्राप्त हुआ था।

[सं. एल-23012/8/2001-आईआर(सीएम-II)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 503.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB, and their workmen, which was received by the Central Government on 30-1-2009.

[No. L-23012/8/2001-IR(CM-II)]

SNEH LATA JAWAS, Under Secy.

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL
GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH

Case No. I.D. 33/2002

Sh. Gian Chand S/o Sh. Faquir Chand, Vill Neilla Colony,
P.O. Olinda, Tehsil, Naina Devi, Bilaspur

...Applicant

Versus

The Chief Engineer, Bhakra Dam, BBMB, Nangal Township,
Ropar

.....Respondents

APPEARANCES

For the Workman : None
For the Management : Shri S. K. Goel

AWARD

Passed on: 16-1-2009, Camp Nangal

The Central Government vide notification No. L-23012/8/2001-IR(CM-II) dated 29-01-2002 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of management of BBMB in terminating the services of Sh. Gian Chand S/o Sh. Faquir Chand is legal and justified? If not to what relief he is entitled to?"

2. Case taken up at Nangal Camp Court. None is present on behalf of the workman. Learned representative of the management is present. From last many days fixed for the hearing of this case the workman is not ensuring his presence. The reference was referred by the Central Government in the year 2002. Several opportunities have been given to the workman but he is not availing the opportunity of being heard. It is already 1.15 p.m. At this stage, I have no option otherwise than to dismiss the claim of workman in reference for non-prosecution and return the reference to the Central Government as such. Accordingly, the reference is returned as such. Let the Central Government be inform. File be consigned.

G. K. SHARMA, Presiding Officer

Chandigarh
Camp Nangal, 16-01-2009

नई दिल्ली, 30 जनवरी, 2009

का.आ 504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 185/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-2009 को प्राप्त हुआ था।

[सं. एल-22012/119/1988-आईआर(सी- II)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 185/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workman, which was received by the Central Government on 30-01-2009.

[No. L-22012/119/1988-IR(C-II)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I.D. 185/99

The General Secretary, Nangal Bhakra Mazdoor Sangh,
Nangal Township (Ropar)

...Applicant

Versus

Chief Engineer, Bhakra Beas Management Board, Nangal.

...Respondents

APPEARANCES

For the Workman : Workman in person
For the Management : Shri S. K. Goel

AWARD

Passed on: 16-1-2009, Camp Nangal

The Central Government vide notification No. L-22012/119/88-D.II (B)/IR(C-II), dated 9-9-99, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management in promoting Shri Ram Kishan as Chargeman (Misc.) w.e.f. 1-6-78 and not as Chargeman (Mechanical) w.e.f. the same date and subsequently promoting him as Chargeman (Special) Gr.II w.e.f. 01-12-82 and not as Foreman Special w.e.f. the same date is just and legal? If not, what relief the workman is entitled to?"

2. Case taken up in Lok Adalat. The workman withdraws the present reference and his statement in this regard has been recorded. In view of the statement of the workman, the present reference is returned to the Central Government as withdrawn. Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

Chandigarh
Camp Nangal
16-01-2009

नई दिल्ली, 30 जनवरी, 2009

का.आ 505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में को मा. फ.अ. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अप्र न्यायालय, सं. 1 धनबाद पंचाट (संदर्भ संख्या 85/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-01-2009 को प्राप्त हुआ था।

[सं. एल-42012/121/89-डी. 2(बी)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 85/1995) of the Central Government Industrial Tribunal/Labour Court, No.1 Dhanbad Now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/S Coal Mines Provident Fund Organisation and their workman, which was received by the Central Government on 30-01-2009.

[No. L-42012/121/89-D.2(B)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/S. 10(1)(d) of the I.D. Act.

Reference No. 85 of 1995.

Parties : Employers in relation to the management of Coal
Mines Provident Fund Organisation, Dhanbad

AND

Their Workman

Present : Shri H.M. Singh, Presiding Officer.

APPEARANCES

For the Employers : Shri M.M. Khan, Advocate.

For the Workmen : Shri D.Mukherjee, Advocate.

State : Jharkhand. Industry : Coal Mines
Provident Fund.

Dated, the 19th January, 2009

AWARD

By Order No. L-42012/121/89-D.2 (B) dated 20-3-90/13-7-95 the Central Government in the Ministry of Labour has referred the following dispute for adjudication to this Tribunal, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

SCHEDULE

"Whether the action of the management of Coal Mines Provident Fund Organisation, Dhanbad, in dismissing Shri Hari Prasad Rajak, L.D. Clerk, is justified? If not, what relief the concerned workman is entitled to?"

2. The case of the concerned workman is that Shri Hari Prasad Rajak had been working as a permanent U.D. Clerk in Coal Mines Provident Fund Organisation at

Dhanbad since long with unblemished record of service. He had been working in the permanent nature of job against permanent vacancy since long continuously to the satisfaction of the management. The concerned workman had rendered continuous unblemished service before issuing a charge-sheet on 22-3-1986 for an alleged incident of September, 1975. It has been stated that in March, 1978 a Memorandum of charge was issued against the concerned workman alleging frivolous allegation against him. The allegation against the concerned workman was that he allegedly identified one alleged Sripat Chamar's A/C. No. C/260748, an alleged ex-employee of Ranipur Colliery. The further allegation against the concerned workman was for allegedly identifying a person posing himself to be the said Sripat Chamar with a view to withdrew the entire proceed of the aforesaid account by cheque credited to the Saving Bank A/C No. 1026245 opened at Sundarchak Post Office in the name of Sripat Chamar. The further allegation that the concerned workman while was working as such at Asansol Office during the year September, 1975 he had misappropriated the alleged entire proceed standing in the name of alleged Sripat Chamar by posing himself as real Sripat Chamar. It was further alleged against the concerned workman that while he was working as such in Asansol Office from September, 1975 indulged himself in activities prejudicial to the interest of Sripat Chamar, a member of the Provident Fund Holding No. C/260748. It was further alleged against the concerned workman that while he was working as such in Asansol office during the period of September, 1975 he had made a false statement before his superior authority in regard to refund of a sum of Rs. 5262.80 representing the Provident Fund accumulation of Sripat Chamar and accordingly he held allegedly misappropriated the amount. It was further alleged that by the aforesaid alleged omission and commission he had exhibited total lack of integrity, responsibilities towards the member of the fund and the Organisation exhibited of a public servant like the concerned workman. It has been alleged that the concerned workman submitted his reply denying the charges emphatically. Though the explanation of the concerned workman was satisfactory enough still than the management constituted a perfunctory departmental enquiry. It has been stated that the biased and prejudiced Enquiry Officer conducted the enquiry in violation of total disregard of law and principles of natural justice and even in the invalid and irregular departmental enquiry all the alleged witnesses were not examined in presence of the concerned workman nor the concerned workman was afforded full opportunity to cross-examine the witnesses. In the invalid and irregular departmental enquiry the recorded statements of some persons were taken into consideration in reaching the conclusion by the Enquiry Officer without availing those persons for cross-examination by the concerned workman. The Enquiry Officer has taken into consideration many extraneous materials and documents and evidence which were not germane to the facts of the case. Even in the invalid and irregular enquiry the charges against the concerned workman were not established. It has also been stated that no criminal case was instituted against the concerned workman for the alleged misappropriation of the fund. The

concerned workman was dismissed by the Appellate Authority wherein and whereby the concerned workman was denied opportunity to prefer appeal against the illegal and arbitrary dismissal. It has also been stated that the allegation as levelled against the concerned workman in the Memorandum of Charges does not constitute any misconduct and hence the management had no authority to issue any chargesheet or memorandum. The allegation as levelled against the concerned workman does not constitute any omission or commission as per Discipline and Appeal Rules applicable to the concerned workman and hence the memorandum of charges was illegal and *void-ab-initio*. In the alleged departmental enquiry no body was examined to prove the alleged hand writing of the concerned workman. The alleged introduction and alleged withdrawal slips were neither produced before the departmental enquiry nor the same were proved by any competent authority charging the concerned workman for alleged charge of introducing one person Sripat Chamar and for withdrawal of amount by posing himself as Sripat Chamar. Before imposing punishment of dismissal the copies of the enquiry report and proceedings were not supplied to the concerned workman and the punishment of dismissal was too harsh and disproportionate to the alleged offence. It has been stated that for an alleged offence of 1975 a charge-sheet was issued after a lapse of three years i.e. in the year 1975. The concerned workman represented before the management several times against the illegal and arbitrary dismissal order but without any effect. Seeing no other alternative a dispute was raised before. A.L.C.(C), Dhanbad and on failure of conciliation the dispute has been referred by the Government of India, Ministry of Labour to this Tribunal for adjudication.

On the basis of facts and circumstances stated above, it has been prayed before this Tribunal to pass an award in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. Written statement has been filed on behalf of the management stating therein that the concerned workman, Hari Prasad Rajak, was working as U.D. Clerk. He was charge-sheeted for inflicting upon him major penalty as per para 31 of C.M.P.F. (Staff and Conditions of Service) Regulations, 1964 vide Chargesheet No. CPF/120(107)/dated 31-3-1978. A regular enquiry was conducted as per para 4 of C.M.P.F. (Staff and Conditions of Service) Regulations, 1964. The enquiry report was submitted by the Enquiry Officer holding the concerned guilty of the charges. The concerned workman was served a second show-cause notice against which the concerned workman submitted a representation dated 22-8-1986 which was taken into consideration by Disciplinary Authority and on the basis of the evidence adduced during the course of regular enquiry the concerned workman admitted that he has identified somebody else as Sripat Chamar under pressure for which an F.I.R. was lodged with Kulti P.S. Case No. 46 dated 23-8-1986 U/S. 467/468, 420/120B of I.P.C. The Coal Mines Provident Fund Organisation is trustee of amount being deposited with then and such an action tarnishes the image of the Organisation having regard to all the circumstances of case the Disciplinary Authority awarded him the penalty

of dismissal from the service vide letter No. CPF/120(107)/64 dated 30-4-1987. It has been stated that the concerned workman is not a 'workman' as per definition of term 'workman' in Section 2(1) of the workman Protection Act, 1948. It is apparent only those persons who are employed either by local authority on a system of public conservancy or sanitation or employed in any industrial establishment, fall within the aforesaid definition. It has been stated that under Sec. 2(2) of the Act, the term "Industrial Establishment" has also been defined in the following words :—

1. A factory as defined in clause (i) of Sec. 2 of 25 of 1934 Factories Act, 1934.
2. A railway as defined in clause (4) of Sec. 2 of 1890 Indian Railway Act, 1890.
3. The establishment of a person who for the purpose of fulfilling a contract with the owner of any industrial establishment, employees, workman;
4. Transport vehicle service ;
5. Dock wharf or Jetty ;
6. Inland steam vessel ;
7. Mine quarry ;
8. Plantation and
9. Workshop or other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or said.

It has, therefore, been submitted that the Coal Mines Provident Fund Office is not an industrial establishment because it does not come within any of the category mentioned in Section 2(2) of the Act, enough substance in this connection as will appear from a plain examination of various establishment described in the said Act, as industrial establishment. It is hardly necessary to state that the office of the Coal Mines Provident Fund by no means be a local authority as contemplated in above quoted provision of 2(1) of the Act. That being the position employees of the Coal Mines Provident Fund Office are not 'workman' within the meaning of the said Act. It has been said that the dismissal order of Shri H.P. Rajak was challenged before the appellate authority i.e. Secretary-cum-Chairman, Board of Trustees, Coal Mines Provident Fund, Ministry of Energy, Department of Coal, and this office was informed vide letter No. 80011/1/87/Adm-I dated 24-10-1987 that Shri Rajak has been rightly punished for his misdeeds and there is no mitigating circumstances to take any lenient view on his appeal and therefore, no revision in punishment already awarded to him is called for the enquiry was based on CCS (CCA) Rules, 1965 which is to based on Article 311 of the Constitution of India having been amended from time to time as per Constitutional amendment and direction. It has been submitted that there is no violation in the regular enquiry and thus the order of dismissal is constitutional and lawful. It has been prayed that the Tribunal be graciously pleased to dismiss this reference for want of jurisdiction and having no merit in this reference.

4. In rejoinder it has been stated on behalf of the workman that the management submitted a rejoinder in reply to the written statement of the concerned workman instead of filing its own written statement. In view of the aforesaid fact it is crystal clear that there is hardly any scope for the workman to file a rejoinder to the written statement of the management. In view of the fact that the management has not filed any written statement so it is crystal clear that the management has got no defence in the present case and also the management is debarred from raising any point far less any legal point before the Hon'ble Tribunal to justify their action. As per terms of reference it is onus of the management to justify the dismissal of the concerned workman but in the so-called written statement the management has not stated any point to justify the action of dismissal. It is thus crystal clear that the dismissal of the concerned workman is illegal, arbitrary, unjustified and is *void-abinitio*. It is stated that the concerned workman is a workman under the Industrial Dispute Act, 1947 and Coal Mines Provident Fund is an 'industry'. It has been submitted that the present reference is legally maintainable and the Hon'ble Court has got jurisdiction to pass an Award for re-instatement of the concerned workman with full back wages.

5. The concerned workman has produced himself as WW-1 and the management has produced MW-1-Hari Charan Kumar. The documents have been marked as Ext. M-1 to M-6 on formal proof being dispensed with.

6. The main argument on behalf of the management is that the concerned workman is not a 'workman' as per Ext. M-6. Ext. M-6 is a Criminal Appeal No. 259/79 dated 22-6-1979 passed by the Sessions Judge, Dhanbad wherein the learned Judge held that the employees of Coal Mines Provident Fund are not workman under the provision of the Act.

7. Learned counsel for the workman argued that on 17-1-2002 it has been held by the Tribunal that the enquiry conducted by the management regarding fairness of the domestic enquiry, was not fair and proper. He argued that if the enquiry was not fair and proper then the concerned workman is entitled for reinstatement.

8. In this respect the management's witness MW-1 has stated in cross-examination in page 2 -"I have not examined any Handwriting expert before the Enquiry Officer to prove that the delinquent workman has wrongly identified the signature of other persons. The concerned workman was not supplied with the copy of the documents upon which the management has relied but the delinquent workman was allowed opportunity to inspect the documents. He has stated that no criminal case was filed against the concerned workman for the alleged misconduct. It shows that no handwriting expert has been examined who might have stated that the signature of the concerned workman is same who has identified fictitious person for withdrawal of an amount of Rs. 5,262.80. The concerned workman categorically denied that he has identified any fake person. Hence it cannot be presumed that the concerned workman has identified any fake person on

whose account Rs. 5,262.80 has been withdrawn Merely because he is a clerk of the management it cannot be presumed that the above cheque was encashed on identification of the concerned workman. Moreover, no criminal case has been filed about the forgery."

9. The learned counsel of the workman referred F.L.R. 1999 (81) page 188 in which Hon'ble Supreme Court laid down that to consider the domestic enquiry and to ask for the fresh evidence-management, if does not lead evidence management would suffer. It has also been laid down by the Hon'ble Supreme Court—

"If the Management does not lead any evidence by availing of this opportunity, it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If however, the opportunity is availed of and the evidence is adduced by management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence."

10. The learned counsel of the management argued that the management of Coal Mines Provident Fund is not an Industry and the concerned workman is not a 'workman' and he does not come under the definition of 'workman'. But no law has been produced by the management which may show that the management is not an 'Industry'.

11. Learned counsel of the workman referred 1998 Lab. I.C. 883 in which Hon'ble Supreme Court also referred (1978) 2 SCC 213 and AIR 1978 SC 548, and laid down—

"(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 SC 1873) (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the intergrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Not with standing the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign function, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered there by."

Considering the above decision of Hon'ble Supreme Court the Government of India, Ministry of Labour has referred the dispute for adjudication, so this Tribunal has got jurisdiction to adjudicate the present industrial dispute.

12. The learned counsel for the workman argued that the chargesheet was issued after 11 years of occurrence which shows mala fide intention of the management. When the occurrence took place on 16-9-1975 and the chargesheet was issued in the year 1986 after 11 years of occurrence regarding pretty amount of Rs. 5262.80 which shows mala fide intention on the part of the management. The management's witness MW-1 has admitted that no handwriting expert has been examined before the Enquiry Officer to prove that the concerned workman has wrongly identified the signature of other person.

In view of the above discussion, I come to the conclusion that the concerned workman is entitled to be reinstated in service with 75% back wages with continuity of service. Since he has already retired from service, he will be entitled 75% back wages and other consequential benefits.

13. Accordingly, I render following award—
The action of the management of Coal Mines Provident Fund Organisation, Dhanbad in dismissing Shri Hari Prasad Rajak, L.D. Clerk is not justified. Hence, he is entitled 75% back wages and other consequential benefits from the date of his dismissal till retirement. The management is directed to implement the award within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 30 जनवरी, 2009

का.आ. 506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै बी.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ब्रह्म न्यायालय सं. 1 धनबाद के पंचाट (संदर्भ संख्या 44/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-01-2009 को प्राप्त हुआ था।

[सं. एल-20012/368/99-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 44/2000) of the Central Government Industrial Tribunal/Labour Court, No.1 Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 30-01-2009.

[No. L-20012/368/99-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the I.D. Act.

Reference No. 44 of 2000

Parties : Employers in relation to the management of
Ropeway Bhulan Bararee Camp of M/s. BCCL

AND

Their Workmen

Present : Shri H.M.Singh, Presiding Officer

APPEARANCES

For the Employers : Shri R.N. Ganguly, Advocate.

For the Workmen : Shri N.G. Arun.

State : Jharkhand. Industry : Coal

Dated, the 20th January, 2008

AWARD

By Order No. L-20012/368/99-(C-1) dated 20-1-2000 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Ropeways of Bharat Coking Coal Limited in not correcting the date birth of Narayan Singh as 31-3-1945 as per assessment of the age by Apex Medical Board on 31-3-95 and not allowing him to join duties with back wages and superannuating from 15-7-95 in violation at serial No. 76 of the JBCCI is justified? If not, to what relief the workman entitled to?"

2. Written Statement has been filed on behalf of the workman. It has been stated that he was employed on 12-7-1973 by the management and all the collieries were nationalised w.e.f. 1-5-1973. He had produced the school leaving certificate duly issued by the Head Master, Sri Sanatan Dharma Vidyalaya, Calcutta-1 at the time of his initial appointment wherein the date of birth of the workman was recorded as 2-3-44 and the same was also incorporated in the Form 'B' Register of the Colliery. In the old Form 'B' the date of birth of the concerned workman was recorded as 2-3-44 by the then colliery owner. The date of birth of the concerned workman in the Provident Fund Ledger was recorded as 2-3-44. After nationalisation, when the present management took over the ownership of the collieries his date of birth was entered as 16-7-1935. The workman had got no knowledge about such change till issue of service excerpt. His I.D. Card No. was 210944 and his CMPF No. was D/539993. In the year 1987 when the service excerpt was issued to him then only he came to know that his date of birth has been changed as 16-7-35 instead of 2-3-44. Subsequently he made written complain before the

management that the date of birth of the workman is 2-3-44 and not 16-7-35. The second copy of service excerpt which was to return to the management after going through it by the workman; he had also shown protest on the body of the same in writing that his date of birth is 2-3-44 and not 16-7-35. As per Implementation Instruction No. 76 (National Coal Wage Agreement) dated 25-4-88, which was agreed by the representative of the workers and representative of the management at C.I.L. Headquarter, Calcutta and latter on same was issued by the Member Secretary, JBCCL, Coal India Ltd. that with respect to age dispute of existing employees following method should be adopted :-

- (i) The school certificate issued by the school prior to the date of employment should be treated as correct and will be binding.
- (ii) If there is a variation, in the age recorded in the record of the company the matter will be referred to the age determination committee/medical board.
- (iii) If there is a very glaring and apparent wrong entry the employee will be referred to the Apex Medical Board for assessment of age.

As per Coal Wage Board, the N.C.W.A. and JBCCL circular which effect the life and liberty of all employees in the coal mines have become part of the service conditions of the employee and accordingly the date of birth recorded in his school leaving certificate and other certificate should have been treated as correct. The aggrieved workman filed several representations on different dates to the management to consider the age of the workman on the basis of the school leaving certificate as well as age declared at the time of initial appointment, but the management turned down and the decision of the management not to consider the age recorded in school leaving certificate as well as Form 'B' of the erstwhile owner of the colliery is illegal, unjustified and arbitrary and same time against the guide line stipulated in I.I. No. 76. Being aggrieved and dissatisfied by the decision of the management the workman had moved a writ application before Hon'ble High Court, Calcutta and after hearing both the parties Hon'ble Justice, Altamas Kabir had been pleased to pass a direction upon the management of BCCL on 19-10-94 to have the aggrieved workman examined by the Apex Medical Board for the purpose of determination of his age as early as possible. It was pronounced in that order that the age assessed by the Apex Medical Board will be binding upon both parties and retirement of the workman shall be abide by the result of the determination of Apex Medical Board. Obeying the order of Hon'ble High Court, Calcutta, Narayan Singh had been advised to appear before Apex Medical Board at Koyla Nagar, Hospital on 31-3-95 at 9.30 A.M. vide letter No. BCCL/CMO/MB/95/235 dated 20-3-95 issued by Sr. Medical Officer, Apex Medical Board, Koyla Nagar Hospital which was addressed to General Manager (Personnel), B.B. Camp, Dhanbad. On the basis of above said letter of Sr. Medical Officer, a copy of which was forwarded to Narayan Singh vide its letter No. GM(R)/PER/MB/95/3702 dated 23-3-1995 and the concerned workman

appeared on 31-03-1995 before Apex Medical Board and he was examined by the Medical Board. The Apex Medical Board had determined the date of birth of Narayan Singh as 50 years as on 31-3-95, which means the concerned workman will be superannated from service from 31-3-2005. The above result of the Apex Medical Board was communicated to the General Manager (Ropeways), B.B. Camp. The management with ulterior motive and malafide intention did not act according to finding of the Apex Medical Board. Once the age has been determined below 60 years then in no circumstances the workman can be forcibly retired. As per Certified Standing Order of M/S. BCCL the age of superannuation of a workman is 60 years. The action of the management in superannuating the concerned workman before attaining the age of 60 years, as assessed by the Apex Medical Board is illegal, arbitrary and unjustified. It has been prayed that the Tribunal be graciously pleased to pass an award directing the management to reinstate the concerned workman in service with retrospective effect with full back wages including other fringe benefits.

3. The management has filed written statement stating that the present dispute is not maintainable being beyond the jurisdiction of this Tribunal because Hon'ble Apex Court has laid down the principle that the date of birth cannot be challenged at the fag end of service. It has also been stated that the Central Government without appreciating the legal position referred the matter before this Tribunal. It has also been stated that this matter does not come under industrial dispute and it cannot be referred Industrial Dispute Act. It has been stated that neither the authority under the I.D. Act while dealing with the industrial dispute at the conciliation stage nor the Central Govt. while taking the matter, considered the order passed by the Hon'ble Calcutta High Court as well as law laid down by the Hon'ble Apex Court in the like nature of industrial dispute, the reference is not sustainable. The admitted position is that the age of the concerned workman is recorded in his service record as 16-7-35 and accordingly, the concerned workman was to superannuate w.e.f. 16-7-95 on attaining the age of superannuation of 60 years and the said entry of the date of birth as per law laid down by the Hon'ble Apex Court was not to be interfered with. The conciliation proceeding was initiated on the basis of an order passed by the Hon'ble Single Judge of the Calcutta High Court in A.P.C. No. 28/95 against which an appeal was filed on behalf of the management and the Appellate Bench of the Hon'ble Calcutta High Court allowed the appeal of the like nature by a common judgment dated 20-11-97 holding that the order of impugned in the appeal including the one in the internal matter suffered from lack of territorial jurisdiction of the Hon'ble High Court and there by nullity in the eye of law. This being so the conciliation proceeding so initiated ought to have been disposed of in the light of the decision of the appellate bench of the Hon'ble Calcutta High Court by virtue of the setting aside of the order of the learned Single Judge. Admittedly the industrial dispute raised by the President of the sponsoring union on the strength of the order passed by the Hon'ble Single Judge of the Calcutta High Court on

19-10-94 and the said order having been set aside in appeal preferred there was nothing to be decided in the conciliation proceeding; the aspect was not taken into account. The conciliation Officer as well as the Central Government failed to appreciate that in view of the setting aside of the order of the Single Judge of the Hon'ble Calcutta High Court, very foundation of the conciliation proceeding did not survive. The learned Conciliation Officer deviating from the industrial dispute so raised by the union sent a letter dated 20-4-99 to the management by changing the nature of dispute in the conciliation proceeding to the extent that the management must accept the age assessment made by Apex Medical with regard to the concerned workman. In that letter of the Conciliation Officer though the due reply dated 18-5-99 was sent clearly indicating therein that the report of the Apex Medical Board was of no consequence insofar as the concerned workman is concerned in view of the non-applicability of the internal instruction No. 76 in the workman's case, by not taking into consideration the said reply the Conciliation Officer beyond his jurisdiction referred the dispute to the appropriate Government vide his letter dated 27-8-99 containing the failure of conciliation. The appropriate Government without appreciating the issue in the conciliation proceeding in utter non-application of mind that the dispute was not at all referable for adjudication before the learned Tribunal referred the dispute for adjudication. It has been mentioned by the management that the reference suffers from the factual aspects being in deviation of the industrial dispute raised at the initial state by sponsoring union as covered under I.D. Act and non-consideration of the order laid down by the Apex Court as well as the order of the Hon'ble High Court setting aside the order of the Single Judge despite the above facts being brought out before the Conciliation Officer on behalf of the management vide its reply dated 18-5-99. The appropriate Government has mechanically without appreciating the law laid down by the Hon'ble Apex Court that the appropriate Govt. must judge whether the industrial dispute has merit before making order of the reference for adjudication to the Industrial Tribunal. It is not in dispute that in its service record concerned workman has accepted his date of birth as 16-7-95 pursuant to which he has been superannuated w.e.f. 16-7-95. Under circumstances it has been prayed that an award may be passed against the concerned workman that he is not entitled for any relief.

4. Rejoinder has been filed by the management to the written statement of the workman. The management has stated same thing which has been said in the written statement filed by the management.

5. Rejoinder has been filed on behalf of the workman stating the same thing.

6. The concerned workman has produced WW-1 Narain Singh and proved document as Ext. W-1.

7. The main argument on behalf of the workman is that his date of birth is 2-3-44 and 16-7-46 wrongly mentioned in Form 'B' Register which has been filed by the concerned workman shows that he got certificate duly issued by the Headmaster, Shree Sanatan Dharam Vidyalaya, Calcutta. He had produced the school leaving

certificate at the time of initial appointment. But in cross-examination he has stated on the date of appointment he was not possessing school leaving certificate. He has also admitted that in Form 'B' Register of M/s. BCCL his date of birth has been mentioned as 16-7-35 and in the service excerpt his date of birth has been mentioned as 16-7-35. The concerned workman had not filed school leaving certificate earlier so that it may be presumed that this was filed at the time of initial appointment. It only shows that for getting his age corrected he has falsely stated that he has filed school leaving certificate in which the date of birth has been mentioned as 2-3-44. If he has produced the date of birth at the time of initial appointment there was no other date of birth has been mentioned in Form 'B' Register which has been signed by the concerned workman.

8. Accordingly, the date of birth assessed by the Medical Board is 50 years. In this respect the order of the Single Judge of Hon'ble Calcutta High Court has been set aside by Division Bench of Hon'ble High Court, Calcutta dated 20-9-97 on the ground that Hon'ble Single Judge of Hon'ble Calcutta High Court has got no jurisdiction to entertain such petition. Hence I.I.No. 76 of NCWA has got no application in the case when the concerned workman is illiterate.

9. The workman argued that Conciliation Officer found that his age should be corrected as 50 years as on 31-3-95 as per Medical Board report but the Conciliation Officer has got no right to advise the management that the concerned workman's age should be assessed as 50 years on the date of appearance before Medical Board. The concerned workman has not moved any application before the management for correction of his date of birth in management's paper, i.e. Identity Card, CMPF record and service excerpt.

10. The concerned workman has not filed Identity Card which shows his date of birth as 16-7-35 as he was knowing that it will go against him. He should have moved application within 2 or 3 or 7 years after appointment and not at the fag end of his service. Moreover, the concerned workman has also as WW-1 admitted in cross-examination that in the service excerpt his date of birth is mentioned as 16-7-35 and he has also admitted that in Form 'B' Register of BCCL his date of birth has been mentioned as 16-7-35 and which was signed by him. He has also admitted that at the time of appointment he was not possessing school leaving certificate though in the written statement it has been stated that at the time of initial appointment he gave school leaving certificate for determination of his date of birth.

11. In view of the above discussions I come to the conclusion that the action of the management of Ropeway B.B. Camp of BCCL in not accepting the date of birth of the workman, Shri Narayan Singh determined by the Apex Medical Board i.e. 31-3-45 and superannuation of the workman on the basis of date of birth recorded in record is justified and the concerned workman is not entitled to any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 30 जनवरी, 2009

का.आ. 507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 70/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-01-2009 को प्राप्त हुआ था।

[सं. एल-20012/25/2006-आई आर (सीएम-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.70/2006) of the Central Government Industrial Tribunal-cum- Labour Court, No.1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 30-1-2009.

[No. L-20012/25/2006-IR (CM-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s. 10(1) (d) (2A) of the I.D. Act.

Reference No.70 of 2006

Parties : Employers in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workman

Present : Shri H. M. Singh, Presiding Officer.

APPEARANCES

For the Employers : None.

For the Workman : None.

State : Jharkhand

Industry : Coal.

Dated the 20th January, 2009

AWARD

By Order No. L-20012/25/2006-IR (CM-I) dated 10/20-7-2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the demand of Rashtriya Colliery Mazdoor Congress from the management of East Busserya Colliery under Kusunda Area of M/s. BCCL for providing pay protection to Sh. Dikeshwar Ram, upon his reinstatement as Drilman Cat-IV w.e.f. 25-6-99 is justified? If so, to what relief is the concerned workman entitled?”

2. The order of reference was received in this Tribunal on 25-8-2006. After notice both parties filed their respective written statements. Thereafter the case was fixed for filing rejoinder to the written statement of the management by the workman. The case is pending for filing of rejoinder by the workman for a long period and even on 31-12-08 no one appeared nor any rejoinder was filed. It seems that the workman/union is not interested to contest their case.

3. In view of such circumstances, I pass a ‘No Dispute’ in the present reference case.

H.M. SINGH, Presiding Officer

नई दिल्ली, 30 जनवरी, 2009

का.आ. 508.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संदर्भ संख्या 71/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-01-2009 को प्राप्त हुआ था।

[सं. एल-20012/240/89-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.71/1990) of the Central Government Industrial Tribunal-cum- Labour Court, No.1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 30-1-2009.

[No. L-20012/240/89-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

PRESENT : Shri Hari Mangal Singh, Presiding Officer.

In the matter of an Industrial dispute U/s. 10(1) (d) of the I.D. Act, 1947.

Reference No.71 of 1990

Parties : Employers in relation to the management of Bhowra (South) Colliery of M/s. BCCL and their workman.

APPEARANCES

On behalf of the Workman : Mr. D. Mukherjee, Advocate.

On behalf of the Employers : Mr. B.M. Prasad, Advocate.

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 12th January, 2009

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(240)/89-I.R. (Coal-I), dated, the 10th April, 1990.

SCHEDULE

"Whether the action of the management of Bhowra Area No. XI of M/s. Bharat Coking Coal Ltd., in not allowing Shri Moti Thakur (Hajam) to join at Bhowra (S) Colliery is justified? If not, to what relief the workman is entitled?"

2. In the W... filed by the workman side it has been stated on behalf of the workman that Moti Thakur (Hajam) had been working as casual Worker at Jealgora Colliery M/s. Bharat Coking Coal Ltd. and while working in the above named colliery the concerned workman completed 226 days attendance which made him entitled to be regularised in employment. However, while working in the said colliery he suddenly fell ill and sent the information about his illness to the management of Jealgora Colliery on 8-12-75. He also informed that he underwent treatment for the same. After recovery from illness when he came to join his duties with medical certificate to Jealgora Colliery he came to know that he has been transferred to Bhowra (S) Colliery and thereafter he reported at Bhowra (S) Colliery for joining on 3-1-1979 along with medical certificate. However, the concerned workman was not allowed to join his duty on 3-1-1979 or subsequently though he used to report and represented frequently for being allowed to resume his duties before the management of Bhowra (S) Colliery. Several representations were made by him personally and through union and ultimately the said matter was taken up by the management. A report dated 21-3-85 under the signature of Supdt. of Jealgora Colliery was submitted to the Personnel Manager, Bhowra Area containing the facts that Moti Thakur (Hajam) has put 226 days attendance, and said Shri Thakur could not join earlier at Bhowra (S) Colliery due to his illness. The management at area level kept the matter pending and allowed to linger and as a result of which Moti Thakur (Hajam) was in great difficulties and to face starvation. As the management of Bhowra Area did not pay any attention to the demand of the concerned workman an Industrial dispute was raised before the ALC(C) which ultimately resulted reference to this Tribunal for adjudication. Accordingly it has been prayed by the workman to pass an Award holding that the action of the management of Bhowra Area XI of M/s. Bharat Coking Coal Ltd. in not allowing Sri Moti Thakur (Hajam) to join at Bhowra(S) Colliery is not justified and the concerned workman is entitled to be put on regular job at the said colliery with all the consequential benefits since 3-1-1979.

3. In the W.S. filed by the management it has been stated that the present reference is not maintainable. There is no relationship of employer and employee between Moti Thakur (Hajam) and the management. Under the circumstances no industrial dispute existed between them. It has been submitted on behalf of the workman that there is none named as Sri Moti Thakur available in the form B Register of Jealgara Colliery and as such the allegation that in the said colliery there was a casual workman named Sri Moti Thakur is false. The contentions of Sri Moti Thakur (Hajam) that he has been working as casual worker at Jealgora Colliery and while working as such he completed 226 days attendance and became entitled to be regularised are all false and fictitious. Sri Moti Thakur, as stated was never an employee in the said colliery. It further been stated that the management being a Govt. of India Public Sector Undertaking does not appoint any person without appointment letter by the competent authority. Moreover no casual worker can be transferred from one Colliery to another as stated by Sri Moti Thakur in his. W.S. It has further been stated that the certificates granted to Sri Moti Thakur in regard to his plea of illness are all bogus, manufactured and no reliance should be placed on the same. Accordingly it has been prayed to pass an Award rejecting the claim of the concerned workman.

4. Both the sides have filed their rejoinders admitting and denying some of the contents of each other's W.S.

5. The workman in order to substantiate his case has produced Sri Kashi Nath Mishra and examined him as WW-1 who has proved document marked as Ext. W-1 and W-2. Moti Thakur and Sudarshan Prasad have also been produced and examined as WW-2 and WW-3 respectively on behalf of the workman. Management side has produced and examined Yogendra Narain Gupta as MW-1 in support of their case.

6. Ld. representative of the workman argued that the concerned workman has got transfer letter and due to illness he had not joined but in that respect WW-1 has proved Ext. W-2 which is a photocopy of letter under signature of Shri V. K. Singh the then Superintendent of colliery and Ext. W-1 which is a photocopy of letter under signature of Shri P. K. Sinha the then Supdt. of Colliery. In this respect regarding this letter in cross-examination WW-1 has stated that in Ext. W-1 number of letter is not legible and he does not know full name of P.K. Sinha who has signed this letter. In this connection Ld. Advocate for the management argued that original letter has not been filed, so this cannot be the basis which can be accepted that on the basis of Ext. W-1 he has been transferred from this Colliery to other Colliery and also this can not be read in evidence as its original has not been produced. There is force in the argument of the Ld. Counsel for the management.

7. WW-2, Moti Thakur (Hajam), the concerned workman has stated in cross-examination that he was never granted pay slip but he used to be paid through vouchers. He was not the member of P.P. and so there was no any document of C.M.P.F. He used to be verbally instructed to go and join to another colliery and necessary papers relating

to those official communications must have been filed before the ALC (C). He is the member of the sponsoring unions and to show that the paper which is there is also lying with the record of the ALC (C). He was appointed as a General Mazdoor on casual basis. This statement of the concerned workman shows that he was transferred verbally and in Govt. undertaking it is not possible that workman or employee is transferred verbally. He has also not filed any appointment letter which will show that he was appointed by the management and in the meanwhile he was transferred from this colliery to another colliery. He has also stated that he is not a member of P.F. and he has got no document of C.M.P.F. and also he has declined to have been granted any pay slip because he says he was paid through vouchers. It shown that he was not the employee of the management because he has not been paid salary as per pay slip and he is also not member of the P.F. WW-3 Sudarshan Prasad in his cross-examination at page-3 stated, "It is true that those who are the regular employee are being issued with Identity Card., Pay Slips and appointment letter. I never had any occasion of seeing such documents concerning the concerned workman. Not only regular employees rather the temporary employees are also being transferred from one place to another by the management of BCCL." Sudarshan Prasad WW-3 had not seen any Identity Card, Pay slip or appointment letter of the concerned workman so that it may be presumed that he is an employee of the management. WW-3 in his cross-examination at page 4 also stated that, "It is true that on the ground of long unauthorised absence regular workman is being dealt with departmentally and a chargesheet is issued against him. It is also true that for BCCL employees hospitals are provided at different places and at Jealgora also there in such facility available. At those places treatments are being given free of cost." From the statement of the concerned workman it appears that the concerned workman has not got any treatment of the management hospital whose treatment is provided free of cost. It shows that this theory has been made by the concerned workman for his unauthorised absence and for having treatment to another place. It is unnatural while management had got hospital, treatment is done free of cost to is employees, the concerned workman has got no treatment in the hospital of the management.

8. In this respect MW-1 Yogendra Narain Gupta has stated in course of his examination-in-chief, "No workman of this name was ever transferred from our colliery to Bhowra South Colliery." The concerned workman has not filed any original paper, Identity Card, pay slip or transfer letter so that it may be presumed that he was employee of the management and has been transferred from one colliery to another colliery and became ill for sometime.

9. There is document which has been filed by the management which shows that there are two persons working with the management one is Moti Thakur and another is Moti Thakur (Hazam). At one place the concerned workman has shown himself as Moti Thakur and in another place i.e.

in the conciliation proceeding he has shown himself as Moti Thakur Hazam, as it has been held before the ALC (C) in discussion with the Janta Mazdoor Sangh in which it has been explained by the management that Moti Thakur has put only 6 days attendance in the year 1973 and another Moti Lal Hajam has put 226 days attendance. It shows that there are two persons named as Moti Thakur and Moti Lal Hajam. Moti Thakur has only put 6 days of attendance for which the concerned workman has filed a certificate from Prakhand Vikash Padadhikary, Jharia and also an application he has written "Hajam" in bracket. So Moti Thakur has never put 226 days attendance but it was Moti Lal Hajam who has put attendance of 226 days. Present reference is regarding Moti Thakur (Hajam) not Moti Lal Hajam.

10. In this respect Ld. Counsel for the concerned workman has referred to a decision reported in 2006 (108) FLR 213 in which Hon'ble Supreme Court laid down Section-25F Burden of proof-as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days. Ld. Counsel for the workman also referred to a decision reported in 1999 (82) FLR 169 in which Hon'ble Supreme Court held that once the termination is held to be illegal, entire reference cannot be rejected on the ground of delay. In a judgement reported in 2007(115) FLR 675 Hon'ble Supreme Court laid down-reference if delayed by several years-Reference made about 16 years later- Labour Court not entertained the dispute on ground of delay in making reference-Labour Court will proceed with reference. Ld. Counsel for the workman also referred to a decision reported in 1980 Lab I.C. 669 in which Hon'ble Patna High Court laid down Industrial dispute-Seasonal factory-Removing a workman from permanent service and allowing him to continue as seasonal worker-dispute as to-amounts to an industrial dispute.

11. Ld. Counsel for the management argued that the dispute is belated one. This argument has got no weight because under the I.D. Act, 1947 there is no time limit for referred the matter for decision. When there is no limitation provided under the Act, on this ground it cannot be said that the reference is belated one.

12. The concerned workman has not filed any original document to show that he was an employee of the management and also he has not filed original Identity Card, transfer letter and C.M.P.F. membership paper so that it may be considered by the Tribunal that he was an employee of the management and he was transferred from one colliery to another colliery.

In the result, the following Award is rendered:—

"The action of the management of Bhowra Area No. XI of M/s. Bharat Coking Coal Ltd. in not allowing Shri Moti Thakur (Hazam) to join at Bhowra Colliery(s) is justified. Consequently the concerned workman is not entitled to get any relief."

H. M. SINGH, Presiding Officer

नई दिल्ली, 30 जनवरी, 2009

का.आ. 509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी. सी. सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, धनबाद के पंचाट (संख्या 52/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-1-2009 को प्राप्त हुआ था।

[सं. एल-20012/37/2002-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 30th January, 2009

S.O. 509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2002) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30-1-2009.

[No. L-20012/37/2002-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a Reference Under Sec. 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 52 of 2002

PARTIES : Employers in relation to the management of Kustore Area of M/s. B.C.C.L.

AND

Their workmen.

PRESENT : Shri H. M. Singh, Presiding Officer.

APPEARANCES

For the Employers : Shri D. K. Verma, Advocate.

For the Workman : Shri S. N. Goswami, Advocate.

State : Jharkhand

Industry : Coal.

Dated the 7th January, 2009

AWARD

By Order No. L-20012/37/2002-IR (C-1) dated 9-5-2002 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Kustore Area of M/s. BCCL in not accepting the application of Masuri Baurin under Voluntary Retirement Scheme and not providing employment to his dependent son is legal and justified? if not, what relief his dependent is entitled to?"

2. The concerned workman has filed written statement stating that Smt. Mosuri Bourin, wife of Abilash Bourin, the concerned female worker is a permanent employee of Rajapur R.O.C.P. Colliery (South Jharia) working as General Mazdoor who has been appointed as Wagon Loader having Personal No. 02354272 and C.M.P.F.A/C.No. C/383802 on 7-12-1973 and her date of birth recorded as 9-7-1944. The management called the application for retirement under the "Special Voluntary Retirement Scheme for the female employees in BCCL" introduced in the year 1985 and thereafter time to time in each year and given wide publicity so that the female employees who intends to avail the scheme can opt for the same in order to rationalise/improve the manpower structure against the actual requirement in BCCL, for generating a productive labour force against female employees. The management introduced the VRS (F) Special in the year 1999 and the concerned worker (female) applied her application for retirement under this scheme in the prescribed Proforma within the time limit and under the age of 55 years at the time of making application and opted to retire voluntarily under the scheme along with all requisite papers and documents. The management of Rajapur R.O.C.P. Colliery (South Jharia) received the application of the concerned female worker and directed to submit further document and 'No objection' etc. and the same has been submitted to the management duly attested by the authority concerned and thereafter the application for retirement under the Special VRS(F) was forwarded to Area Office on 2-8-1999 vide P. No. 1041 along with other application of female workers, who opted to retire under the VRS(F) from the Service and intends to provide employment to their sons in their places. Sri Buneswar Bourin, the nominee son of the retiring female employee, Masuri Bourin has been sponsored and offered employment, who is aged about 23 years and by caste "Bourin" belongs to Schedule Caste and local man within the District of Dhanbad in the State of Jharkhand. It has been stated that the application under the VRS(F) Spl. is within the time and age limit of the retiring female employee and the Scheme is lawfully vogue and operative, apart from the management have accepted applications of other female workers under the same scheme and same time of application and provided employment to their dependents in the colliery, but in the case of the present female worker the application has neither been rejected nor any speaking order has been passed showing the reason or reasons whatsoever. The action of the management in not providing employment to the dependent of the female worker under VRS(F) Special of the year 1999 on the similar and same scheme as accepted the applications of other female workers of the colliery and have provided employment to their dependent sons is not justified, which amounts to unfair labour practice, prejudice adopting pick and choose policy and is utter violation of principles of natural justice. Therefore, the female worker is legally entitled to get the benefit under the VRS(F) SPECIAL. In view of the above facts and circumstances it has been prayed that the Tribunal may graciously be pleased to consider the dispute and pass an award directing the management to accept the application of the female worker who applied for retirement from the service of the company under the VRS(F) Special and provide employment to her dependent son in her place.

3. Written statement has been filed on behalf of the management stating therein that the present reference is not maintainable either in law or in facts. Smt. Masuri Bauri is a permanent employee of Rajapur Open Case Project/South Jharia under Kustore Area of M/s. B.C.C.Ltd. and she was designated as a General Mazdoor and her date of birth is 9-7-1944 as per records of the Company. The concerned worker submitted documents required for consideration of application under the Special Voluntary Retirement Scheme (Femal) in the year 1999 after attaining the age of 55 years. The application of Smt. Masuri Bauri under Special Voluntary Retirement Scheme was not accepted as she has already crossed the age of 55 years and she is still in the employment of the company. The main object for introducing Special Voluntary Retirement Scheme (Female) is to generate a productive labour force against that female employees, who are not being gainfully employed. Smt. Masuri Bauri is gainfully employed in R.O.C.P. by the management, hence the question of providing employment to her son under V.R.S. (Female) Scheme does not arise. The concerned worker is on verge of retirement, hence she is not entitled for benefit under the Voluntary Retirement Scheme (Female). The management of M/s. BCCL is suffering from heavy financial loss due to surplus manpower and that being the position, the management is not a position to provide employment in BCCL. M/s. B.C.C. Ltd. is a State within the meaning of Article 12 of the Constitution of India and that being the position the management can not provide employment to any one in contravention of Articles 14 & 16 of the Constitution of India. Non-acceptance of application of VRS(F) is not a subject matter of the Industrial Dispute.

It has been stated in rejoinder that the concerned worker submitted her application without documents and she submitted the required documents for consideration of her application under V.R.S.(F) after attaining the age of 55 years.

Rejoinder has also been filed on behalf of the workman stating the same thing which has been stated in its written statement.

4. The management has produced MW-1 H.K. Choudhary who has supported the case of the management.

5. The learned counsel of the workman argued that Smt. Masuri Bourin submitted her application for retirement under the Special V.R.S.(F) before attaining 55 years of age but the management did not consider it. In this respect the application of Smt. Masuri Bourin, Ext. M-2, shows that it has been moved on 16-6-99. Her date of birth is 9-7-1944. Again she has moved application on 1-8-1999 after removing objection and gave affidavit. As per Ext. M-3 it has been found by the management on 13-7-99 that Smt. Mosuri Bourin has not given no objection affidavit and as per Ext. M-4 it has been required by the management which she should give affidavit for employment regarding her son. As per Ext. M-5 circular dated 5-9-95 it has been mentioned that Special Scheme for VRS(F) employees the age has been limited from 55 to 50 years, so the application has been moved by the concerned worker not below 55 years but before 55 years and her application should be as per Ext. M-5 for entitlement of VRS(F) Special upto the age

of 50 years. So it cannot be given effect. As per Ext. M-7 Special Voluntary Retirement Scheme for the Female employees circular dated 12-4-95 shows that any permanent female employee except Nurses and Essential staff whether she is intine-rated or piece-rated below the age of 58 years at the time of making application may opt to retire voluntarily under this scheme which shows that the application should be moved below the age of 58 years which has not been done in the present case.

6. The learned counsel of the management referred 2008 lab. I.C. 3575 on which Hon'ble Supreme Court laid down that under Article 16 Voluntary Retirement Scheme benefit is available only on acceptance of his offer to retire. The Hon'ble Supreme Court laid down.

"The employee derives legal right to obtain benefits of the Voluntary Retirement Scheme only after his offer to retire is accepted. When a scheme is floated for voluntary retirement, it constitutes an offer to treat. It is not an offer *stricto sensu*. Only when pursuant to the said invitation to treat an employee opts for such a scheme, it constitutes an offer. When such an offer is made, it is required to be accepted. Subject, of course, to the terms of 'invitation to treat' as also those of the offer as envisaged under the Indian Contract Act, an offer has to be accepted. Unless an offer is accepted, a binding contract does not come into being a Voluntary Retirement Scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated.

Thus, where to the offer made by respondent-employee as per VRS administrative clearance was granted but the Head Office refused to give acceptance due to insufficiency of funds, the employee could not claim benefits under the Scheme. Moreso, when the employee continued to work and accepted the salary till his retirement and there was nothing on record to show that he draw his salaries without prejudice to his rights and contentions. In circumstances it could also be said that he waived his rights."

So, in the present case it shows that the concerned worker has moved application after attaining 58 years of age and as per BCCL, Circular maximum age is 58 years for getting VRS(F). Moreover, Smt. Mosuri Bourin has got superannuated from the Company, so after superannuation and giving her application after attaining 58 years, this Scheme cannot be given to such employee.

7. Accordingly, I render the following award.

The action of the management of Kustore Area of M/s. BCCL in not accepting the application of Masuri Bauri under Voluntary Retirement Scheme and not providing employment to his dependent son is legal and justified, and hence, the concerned worker is not entitled to any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

क्र.आ. 510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चेयरमैन, स्टेशन कैंटीन, लुधियाना के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 193, 195/2002, 223, 219, 225/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-14012/18, 30/2002-आईआर(डीयू)]

[सं. एल-14012/38, 43, 37/2003-आईआर(डीयू)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 193, 195/2002, 223, 219, 225/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Chairman, Station Canteen, Ludhiana and their workman, which was received by the Central Government on 2-2-2009.

[No. L-14012/18,30/2002-IR (DU)]

[No. L-14012/38, 43, 37/2003-IR (DU)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

**Case No. 193/2002, 195/2002, 223/2004,
219/2004, 225/2004**

- (1) Shri Jang Singh Gill S/o Late Shri Balbir Singh Gill, H.No. B 37/1540, Street No. 4, Guru Nanak Colony, Block A, Gill Can Ludhiana.
- (2) Ms. Dharamjit Kaur D/o Late S. Gurdev Singh Gill, R/o Vill. Mudian Khurd, PO Sahabana, Ludhiana.
- (3) Mukhtiar Singh R/o Shaheed Bhagat Singh Colony, Near Chungi, Amloh Road, Distt. Ludhiana.
- (4) Shri D.D. Kakkar R/o Shiv Mandir Gali, Old Mandi Mullanpur, Ludhiana.
- (5) Shri Gurbachan Singh R/o Ward No. 9, Krishana Nagar, Gali No. 3-4, Khanna, Distt. Ludhiana.

.....Applicant

Versus

The Chairman, Station Canteen, Ludhiana, HQ. 715(1),
AD Bde C/o 56, A.P.O.

.....Respondent

APPEARANCES

For the Workman : Shri Paramjit Batta

For the Management : Sri Gurpreet Singh

AWARD

Passed on 22-1-2009

These five references namely ID No. 193/2002, Ref. No. L-14012/18/2002-IR(DU), dated 3-9-02, Shri Jang Singh Vs. Station Canteen, ID No. 195/2002, Ref. No. L-14012/30/2002-IR(DU), dated 3-9-02, Ms. Dharamjit Kaur Vs. Station Canteen, ID No. 223/2004, Ref. No. L-14012/38/2003-IR(DU), dated 19-5-04, Shri Mukhtiar Singh Vs. Vajra Station Canteen, ID No. 219/2004, Ref. No. L-14012/43/2003-IR(DU), dated 19-5-04, Shri D.D. Kakkar Vs. Vajra Station Canteen, ID No. 225/2004, Ref. No. L-14012/37/2003-IR(DU), dated 19-5-04, Shri Gurbachan Singh Vs. Vajra Station Canteen are related to each other. Common questions of law and facts are involved for adjudication, hence, are hereby adjudicated by a single award.

The main question for determination before this Tribunal in all these references is whether the termination of the workmen by the management of respondent on different dates from October 1990 to July 2000 is illegal? If so, to what relief all the workmen are entitled.

On perusal of the pleadings or parties, it is evident that the workmen were engaged on the basis of interview held by the management of respondent for running the Station Canteen which is set up for the benefit of ex-military personals. On perusal of pleadings it is also evident that initially all the workmen were appointed for a fixed time through the written instrument and the period was extended time to time after expiry of fixed period by executing the separate written instrument. The management has contended that the appointment of all the workmen was contractual for a fixed term and after expiry of the term of contract, the services of workmen terminated automatically. It was not a continuous appointment but was an appointment for a short time which was to be terminated automatically on expiration of the term. Workmen in their pleadings and evidence have admitted that they were appointed for the fixed term, but have contended that such fixed term appointment is unlawful labour practice. They have continuously served in the canteen run by management of respondent and their services were protected from termination without any notice or terminal dues in compliance of the provisions of I.D. Act.

I have gone through the evidence of parties oral and documentary.

It is the settled principle of jurisprudence that if appointment is made for a fixed term, it ceased to exist on expiry of the term. In all the references the agreements executed in between the parties from time to time are on record. On careful perusal of these records, it is evident that the appointment letters were issued to all the workmen on their selection after interview and a document was executed between the workmen and the management of respondent which is titled as "contract form for employment of the Station Canteen Ludhiana (Pb.)". On

perusal of all the terms and conditions of this instrument, it is clear that the appointment of workmen was for a fixed term. Even before the fixed term, services of the workmen could have also been terminated as follows.

- (1) On closure of the canteen the services of the workmen shall stand terminated automatically,
- (2) On misconduct of the workmen the services could have been terminated, similarly,
- (3) Clause 14 of the instrument provides that on termination of the contract the first party (workmen) shall deliver to second party (management) all book records, stocks and other articles belonging to first party. It means on termination of the contract the services of the workmen comes to an end and he was under the contractual liability to return all the books, records, stocks and other articles held by him during the period he served for the management of respondent.

Thus, from the perusal of all the evidence on record, I am of the view that appointment of workmen was purely contractual for a fixed term. After expiry of said term, another instrument was executed between the parties. Fresh appointment letter were given to the workmen and such appointment cannot be treated appointment in continuation. On expiry of the bilateral instrument the services rendered by the workmen comes to an end and if management opted to get the services of the workmen again, it was a fresh appointment and cannot be called as the appointment in continuation. In the same way, on perusal of entire materials on record, I am enable to accept the contention of the workmen that issuance of such appointments will amount to unlawful labour practice. Appointments were made and contracts executed as per law, which cannot be termed as unlawful labour practice.

The canteen to which the workmen served is established for the benefit of ex-military personals. Under the beneficiary scheme, the administration of the canteen is also given to ex-military personals upto the age of 58 years. In my opinion contractual appointment is given to the ex-military personnel with a view to give the benefit of such beneficiaries' scheme to the maximum ex-military personels. Accordingly, extension by the management cannot be termed in any way the unlawful labour practices.

On above discussion, I am inclined to hold that appointments of the workmen were for a fixed term and on expiry of the fixed term their services were automatically terminated. It will have no effect that how many times fresh appointments were made for a fixed term. On expiry of the term fixed in the last instrument the services of the workmen were terminated and they were not entitled for retrenchment compensation. The management of respondent was not under obligation to give any notice, if

not willing to terminate the services of the workmen, prior to the termination of the instrument (contract).

All these references were also taken in Lok Adalat for their adjudication through the mechanism of negotiation and conciliation. Order sheets of all the references shows that once there was a possibility of settlement on the basis of certain presumptions and norms. Thereafter, due to the reasons known to the management, it could not materialized. I am of the view that discussion took place in Lok Adalat would have least concern while adjudicating the matter after affording the opportunity of being heard to both of the parties in compliance of principle of natural justice. In Lok Adalat parties are liberty to relex the term of contract on their consensus. Parties were motivated to relex the term, but no final settlement materialized. Thus, I am inclined to adjudicate the references strictly on the basis of provisions of law including judicial pronouncements.

On the basis of the above discussion, all the references are answered that the termination of the workmen by the management is not illegal because their services were terminated automatically with the life of the contract and they are not entitled for any relief. Central Government be approached for publication of award, and thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 187/99 तथा 35/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-40012/148/99-आईआर(डीयू)]

[सं. एल-40012/320/99-आईआर(डीयू)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 511.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 187/99 and 35/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 2-2-2009.

[No. L-40012/148/99-IR (DU)]

[No. L-40012/320/99-IR (DU)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. ID 187/99 and 35/2000

- (1) Shri Krishan Chand S/o Shri Sant Ram, H.No. 430,
Ward No. 15(i), Deonghat, Solan (Himachal Pradesh)
- (2) Ms. Maya W/o Shri Nand Lal, C/o SDE(OFC)/
Microwave Station, Solan (Himachal Pradesh)

.....Applicant

Versus

The Executive Engineer, Telecom Civil Division, Amrik
Singh Building, Khalaini, Shimla, (Himachal Pradesh)-
171001

.....Respondent

APPEARANCES

For the Workman : Sri J. C. Bhardwaj

For the Management : None

AWARD

Passed on 21-1-2009

Both of the references namely ID No. 187/99, Shri Krishan Chand Vs. Telecom. Ref No. L-40012/148/99-IR(DU), dated 13-9-99 and ID No. 35/2000, Smt. Maya Devi Vs. Telecom. Ref No. L-40012/320/99-IR(DU), dated 27-1-2000 are of similar nature, hence, both of these references are answered by this award.

Common question of facts and law are involved in answering these references. The Tribunal is supposed to answer whether the action of the management in terminating the services of Shri Krishan Chand and Smt. Maya Devi is legal and justified? If not, to what relief they are entitled?

It is the contention of the workman, Shri Krishan Chand that he worked with the management of respondent from 25-4-96 to 15-12-97, continuously without any break as Plumber/Carpenter/Peon. His services were terminated against the provisions of Industrial Disputes Act, without notice and terminal dues. His juniors were retained, whereas, his services were illegally terminated. He raised an industrial dispute and on account of failure of conciliation proceedings, this reference.

Likewise, it is the contention of Smt. Maya Devi that she was appointed by the telecommunication Solan Sub-Division as Typist-clerk in the month of 1997. She was getting salary of Rs. 1500/-p.m. by the SDO telecommunication which was increased to Rs. 1600/-p.m. in November 1997. Her services were terminated illegally on, 10 September, 1997, against the provisions of Industrial Disputes Act, as no notice and terminal dues were given to her.

Both of the workmen have prayed for their reinstatement into the services with full back wages and continuity in services.

In both of the references, the management has taken a plea that none of the workman was appointed directly by the management. Their services were provided by a contractor whose contract was to supply the labour for maintenance of work in Telecommunication Solan, Sub-Division. The contractor supplied the services of both of the workmen and on expiration of the term of contract, their services were terminated. It was further alleged that there was no employer-employee relationship between the workmen and the management and both of the references are likely to be answered accordingly.

The main issue for determination before this Tribunal is whether there existed any employer-employee relationship between the management and the workman, and whether their services were provided to the management through contractor on outsourcing basis?

Both of the parties were afforded the opportunity of being heard which includes opportunity for adducing evidence. In ID No. 187/99 evidence of workman was recorded on 19-8-04. The workman was cross-examined by learned counsel for the management. But on date fixed management failed to adduce/produce any witness/evidence, hence, its evidence was closed by this Tribunal vide order dated 10-10-08. Opportunity for oral and written arguments were also given but management did not turn up, thereafter.

Likewise in ID No. 35/2000, on several occasions workman Shri Maya was available, for cross-examination but she was not cross-examined by the management. Hence, the opportunity for cross-examination was closed. As management repeatedly did not turn up, the evidence of management was also closed vide order dated 10-10-08. Opportunity for written and oral arguments was also given to the management and 10-12-08 was fixed. But management did not avail the opportunity as well. Thereafter, on 20-12-08 in both of the references arguments were heard and references were reserved for award. This Tribunal afforded more than reasonable opportunity to the management, but the management reasons known to it, did not avail the opportunity. Thus, no option was left for this Tribunal except to proceed with in accordance with law.

It is the contention of the workmen that they were appointed directly by the management and were paid by the management only. To prove this contention the workmen have filed the photocopies of attendance register maintained by the management. The genuineness of this document has not been challenged by the management. The attendance register is maintained by the department. Of course, the workmen may have managed the photocopy and file the same. It was the duty of the management to file

the original attendance register or at least to deny the genuineness of the photocopies filed and relied upon by the workmen. The management fails in its legal responsibility. Accordingly, the photocopies of the attendance register provided and relied upon by the workmen shall be read over into evidence as such.

The contention of the management is otherwise. As per the management, services of workmen were provided by the contractor from time to time on requirement basis. The contention of the management is altogether different than that of the workmen. The workmen in support of their contention have filed prima facie evidence. It is also held to be reliable by this Tribunal. On the other hand the management has failed to provide any material to prove his contention that services of the workmen were provided through contractor on outsourcing. It was the duty of the management to provide with this Tribunal the copies of tenders floated and agreement entered with the contractor for supply of labour. It was also the duty of the management to prove by material evidence that both of the workmen were paid by the contractor and not by the management. Thus, on account of the failure of the management to prove, even prima facie, the services of the workmen were provided to the management through contractor, I am of the view that the document filed by the workmen proved the direct relationship between management and the workmen. The Photocopies of the attendance register filed by the workmen proved that both of the workmen have worked 240 days with the management in the preceding year from the date of their termination. Their services, admittedly, were terminated without any notice or terminal benefits.

It is the well recognized principle of service jurisprudence that to take the benefit under similar circumstances workmen have to prove that they were directly recruited by the management, were under the administrative control of the management and were directly paid by the management. The evidence which is adduced by the workmen proved the direct relationship between the management and the workmen. There is unchallenged testimony in the form of affidavits which also proved that they were directly paid, and worked under the administrative control of the management.

It is true that the workmen have to prove their case and the Tribunal cannot assume on failure of the management to file or adduce any evidence. But in these references, as stated earlier, the workmen have filed sufficient evidence, which can be expected from a man of prudence to file, which proved the direct relationship between the workman and the management. All the original documents are lying with the management. The management has not filed them. Thus, adverse inference shall be taken against the management that it has withhold the documents with ulterior motive. Accordingly, both of the references are answered in negative that action of the

management in terminating the services of the workmen, namely Shri Krishan Chand and Smt. Maya Devi are not just, fair, legal and justified. They have worked with the management for more than 240 days in the preceding year from the date of their termination; hence, their termination was to be regulated by the provisions of Industrial Disputes Act. One month notice and terminal dues were required for their termination. Management failed to give one month notice or one month salary in lieu of the notice and other terminal dues resulting their termination illegal being against the provisions of Industrial Disputes Act. Whenever any Tribunal comes to the conclusion that the termination of the workman was illegal, there may be two possible remedies available. The first remedy is reinstatement of the workman into the services, with or without back-wages, and another remedy is a reasonable compensation to compensate the workman. It is also the principle of service jurisprudence that the Tribunal or Labour Court should prefer to reinstatement into the services of the workman because that is the intention of Industrial Disputes Act, which protect the interest of every workmen against illegal termination. Accordingly, I am of the view that reinstatement of both of the workmen into the services on the same status, terms and conditions, they were working previously with the management and as held by this Tribunal, will be proper remedy. Accordingly, the management of the respondent telecommunication is directed to reinstate the services of the workmen within one month from the date of the publication of this award. Considering the facts and circumstances of the case, I am of the view that workmen will not be entitled for the back wages but they will be entitled for continuity of the services.

Appropriate Government be informed for publication of the award. Thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 127/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-12011/13/1996-आईआर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 512.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 127/1997) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure,

in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 2-2-2009.

[No. L-12011/13/1996-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI G. K. SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. ID 127/97

The General Secretary, Punjab National Bank Staff Union, Old University Road, Rajinder Nagar, Jammu

.....Applicant

Versus

The Regional Manager, Punjab National Bank, 48-A/B, Gandhi Nagar, Jammu

.....Respondent

APPEARANCES

For the Workman : Shri Sandeep Bhardwaj

For the Management : Shri S.K. Sharma

AWARD

Passed on 22-1-2009

Central Government vide notification No. L-12011/13/96-IR(B-II) dated 27th of May, 1997 has referred the following dispute to this Tribunal for adjudication :

“Whether Shri Rajinder Kumar is a workman under Section 2(S) of the I.D. Act and entitled for absorption in the services of Punjab National Bank?”

2. Case taken up in Lok Adalat. The rep. of the workman, Shri Sandeep Bhardwaj withdraws the present reference and his statement in this regard has been recorded. In view of the statement of the rep. of the workman, the present reference is returned to the Central Government as withdrawn. Central Government be informed. File be consigned.

Chandigarh

22-1-2009

G. K. SHARMA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि करण चंडीगढ़ के पंचाट (संदर्भ संख्या 129/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-12011/13/1996-आईआर(बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 129/1997) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 2-2-2009.

[No. L-12011/13/1996-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI G. K. SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. ID 129/97

The General Secretary, Punjab National Bank Staff Union, Old University Road, Rajinder Nagar, Jammu

.....Applicant

Versus

The Regional Manager, Punjab National Bank, 48-A/B, Gandhi Nagar, Jammu

.....Respondent

APPEARANCES

For the Workman : Shri Sandeep Bhardwaj

For the Management : Shri S.K. Sharma

AWARD

Passed on 22-1-2009

Central Government vide notification No. L-12011/13/96-IR(B-II) dated 27th of May 1997 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Punjab National Bank in denying payment of Special Area Allowance to the employees of the bank's branch at Shamachak, District Jammu, is legal and justified? If not, to what relief the employees working in that branch are entitled?”

2. Case taken up in Lok Adalat. The rep. of the workman, Shri Sandeep Bhardwaj withdraws the present reference and his statement in this regard has been recorded. In view of the statement of the rep. of the workman, the present reference is returned to the Central Government as withdrawn. Central Government be informed. File be consigned.

Chandigarh

22-1-2009

G. K. SHARMA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 514.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 33/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-12011/88/2006-आईआर(बी-II)]

राजेंद्र कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 33/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workman, received by the Central Government on 2-2-2009.

[No. L-12011/88/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRIGYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No. ID 33/2007

The Vice President, Bank Employees Federation of India
(Punjab State), 109-B, Kitchlu Nagar, Ludhiana

.....Applicant

Versus

The Deputy General Manager, Indian Bank, Circle Office,
SCO No. 189-192, Sector 7-C, Chandigarh

.....Respondent

APPEARANCES

For the Workman : Shri Harish Kapoor

For the Management : Shri S.K. Soni

AWARD

Passed on 19-1-2009

Government of India vide notification No. L-12011/88/2006-IR(B-II), New Delhi dated 28th of May, 2007 referred the following industrial dispute for judicial adjudication of this Tribunal :

"Whether the demand of the Bank Employees Federation of India, Punjab State in regard to non-creation of Allowance carrying posts mentioned in Para 5.282 & 5.326 of Desai Award and non-payment of allowances thereof amounts to violation of the Award by the management of Indian Bank or not ? If so, to what relief they are entitled ?"

One Sh. Harish Kapoor in capacity of Vice President of Bank Employees Federation of India (Punjab State), raised the industrial dispute for non-implementation of Paras 5.282 & 5.326 of Desai Award against the management of Indian Bank. On failure of conciliation proceedings before ALC, Chandigarh, this reference.

It is the contention of the Federation of bank employees that both of the paras namely 5.282 and 5.326 of Desai Award which are having binding force of law contains some specific special allowances along with amount of the allowance, which is still unimplemented. It is also the contention of the workmen that these allowances cannot be given a practical shape unless corresponding posts have not been created by the management resulting in violation of the rights of several workmen of the Federation. As an example, Harish Kapoor on behalf of the Federation has quoted his own example. He is still working as a Clerk/Typist after putting in 32 years of service due to non-implementation of Shastri Awards and Desai Awards.

It is also to make clear that before raising the instant industrial dispute, Sh. Harish Kapoor, on behalf of the Federation, moved an application to the Regional Labour Commissioner (Central) Government of India, Ministry of Labour to take appropriate action against Chairman/Managing Director and other office bearers of the Indian Bank under Section 29/32 of Industrial Disputes Act, 1947 (hereinafter referred as an Act) for non-implementation of the provisions of Shastri Award and Desai Award regarding special allowance to clerical staff and subordinate staff specially concerning Mr. Harish Kapoor, Clerk/Typist, Indian Bank Dugri Branch, Ludhiana who is still a Clerk after putting in 30 years of service. This application was contested by the management of the bank and the same was converted into industrial dispute under Section 2k of the Act, for making reference under Section 36-A to the Tribunal for interpretation of Award. Feeling aggrieved with this order, Sh. Harish Kapoor, on behalf of the Federation, filed a writ petition before Hon'ble High Court of Punjab and Haryana and Hon'ble the High Court was kind enough to dispose of the petition on 13-3-07 with the view that conciliation officer rightly came to the conclusion that the dispute raised by the petitioner is required to be adjudicated by the Labour Court on the sanction of new posts and subsequently the payment of special performance allowance. It was ordered by the High Court that the matter be put up before the Labour Court for necessary adjudication. Accordingly, this reference for interpretation of said paras was referred to the Tribunal, in view of creation of posts and payment of special performance allowance to the subjects of the Federation.

The management of the bank raised the preliminary objection that Sh. Harish Kapoor was not authorized to raise this industrial dispute. He could not raise such a dispute in individual capacity and he was not authorized by the Federation to raise the dispute on behalf of the

members of the Federation. It was further contended by the management of the bank that Desai and Shastri Awards have been subjected to modifications by several bipartite settlements between the management of the banks and their unions. The latest such bipartite settlement is dated 14-2-95, which barred the present dispute before this Tribunal.

The management of the bank has further contended that all the provisions of every award have been implemented. The paras in question of Desai Award are not related to any creation of posts which is the discretionary policy making power of the management.

On the basis of the pleadings of the parties, the main issues for adjudication are as follows:—

1. Whether Sh. Harish Kapoor was competent to raise the industrial dispute and to present himself in this reference on behalf of the Federation?
2. Whether the management of the bank is bound by paras 5.282 and 5.326 of Desai Award to create specific posts for the purpose of payment of special performance allowance to its employees?

I am answering these issues one by one.

On issue No.1, both of the parties were afforded the opportunity for adducing evidence. It is also to make clear that management of bank raised a specific issue by moving an application that Sh. Harish Kapoor was not empowered to raise the present industrial dispute and to present himself on behalf of the Federation in the present reference. Vide order dated 2-9-08 and 15-9-08, Harish Kapoor was directed to file the material before this Tribunal or adduce oral evidence regarding his contention that he was empowered to raise this industrial dispute and present himself before this Tribunal in the present industrial reference on behalf of the Federation. Sh. Harish Kapoor adduced the evidence of Sh. Jagir Singh, Secretary General of the All India Federation. He was examined by the Court as WW1. He has categorically mentioned in his evidence that he is empowered to appoint any person to appear before any Tribunal/Court subject to the approval of executive of the Federation. He has also mentioned that his decision to nominate Sh. Kapoor as representative of the Federation to raise the present industrial dispute has yet not been rectified by the executive of the Federation. The constitution of Federation is also on record. As per the provisions of the constitution of Federation, Sh. Kapoor could only represent the Federation before this Tribunal, if he was duly authorized by the executive of the Federation. Admittedly, Sh. Harish Kapoor was authorized by the Secretary General and not by the executive of the Federation. Vide order dated 22-9-08, this Tribunal directed Sh. Harish Kapoor to get his authorization approved by the executive of the Federation within one month. This Tribunal on 22-9-08, passed the following order:

"as stated earlier that yet now the authorization of Harish Kapoor has not been approved by the Federation is a technical mistake and in my opinion, it should not have any adverse effect on the authorisation of Sh. Harish Kapoor, provided, his authorization is approved by the Federation within one month from the date of passing of this order. Accordingly, Sh. Harish Kapoor can represent himself before this Tribunal in this reference subject to the approval of his authorization by Federation within one month."

No such approved authorization was filed before this Tribunal. Moreover, Sh. Harish Kapoor absented himself either on one context or another. Finally, he moved an application through registered post A.D. that he did not want to adduce any evidence, hence, the reference be disposed of on the basis of documentary evidence, already filed.

The authorization of Sh. Harish Kapoor to raise the present industrial dispute and to represent the Federation in the present reference is not as per the provisions of the constitution of Federation. He was afforded the opportunity by this Tribunal vide order dated 22-9-80, to correct his authorization by getting the approval from the executive of Federation, but he failed. Moreover, he absented himself from this Tribunal and requested for adjudication of this reference on the basis of the documentary evidence already adduced by him. This reference is the result of converting the complaint into an industrial dispute by the conciliation officer for interpreting the paras 5.282 and 5.326 of Desai Award. Sri Kapoor failed to file the proper/authentic and legal authorization on behalf of the Federation to represent the Federation in this reference. Even after afforded the opportunity, he could not succeed to file the authorization. Accordingly, in absence of legal authorization, he cannot represent the Federation in this reference.

On perusal of complaint filed by Sh. Harish Kapoor on behalf of the Federation before the conciliation officer and statement of claim filed by him on behalf of the Federation, it is also evident that he has tried to raise the personal grievance in the name of the Federation. Title of the complaint filed by him before the Conciliation Officer/Regional Labour Commissioner, Chandigarh, para 10 of the statement of claim and the facts mentioned in para 20 of the claim petition filed before this Tribunal proved that he has raised the individual concern by stating that he is still a Clerk/Typist after putting in 32 years of service due to non-implementation of Shastri Awards and Desai Awards. He has not mentioned any other specific instance which resulted in violation of any right of any member of the Federation for non-implementation of Shastri and Desai Awards. Thus, Sh. Harish Kapoor has tried to give a colour to his personal grievance as the collective grievance of the Federation, which is not possible under the law. Sh. Harish Kapoor, as stated by him, has not

individually raised this dispute. He has raised it on behalf of the Federation for which he was not authorized, accordingly, he cannot represent Federation before this Tribunal in this reference.

By answering the issue No.1, there is a short route available to this Tribunal to decline the answer this reference on the ground that Sh. Harish Kapoor is not authorized by the Federation. But considering the direction of Hon'ble the High Court that the issue of interpretation of paras 5.282 and 5.326 of Desai Award should be adjudicated by the Labour Court and also considering the nature of dispute, I am also of the view that I must interpret the paras 5.282 and 5.326 of Desai Award. Paras 5.282 and 5.326 of Desai Award contains the provisions regarding certain specific performance allowances and their amount as well. These provisions have been modified by several bipartite settlements. I have gone through both of the paras of Desai Award as modified from time to time. I am of the view that the provisions of paras 5.282 and 5.326 of Desai Award, as modified from time to time, does not speak about the creation of posts but give a quantum of special allowances that becomes payable to the workmen being specially assigned such work by the bank. Thus, the provisions have no concern with the creation of any posts for conferring the specific performance allowances. These allowances are awarded to those workmen who have been conferred the specific work to do in the existing cadre. Meaning thereby, in the existing cadre, only those workmen can claim specific allowance under the said impugned provisions who have been assigned the special task to perform by the management of the bank. These special allowances have the nexus with the special performance and not with the posts. All the workmen in a particular cadre are not entitled for such specific performance allowances mentioned in the said paras of Desai Award, but only those workmen who performed the specific task on the direction of the management of the bank can claim such allowances. Thus, I am of the view that the impugned paras of Desai Award, as amended from time to time, have no concern with the creation of posts and the management of respondent cannot be held liable for non-implementation of the impugned provisions of Desai Award.

I am also convinced with the contention of the management of the bank that the relief of the workman is also barred by the provisions of bipartite settlement dated 14-2-95. There is specific provision in the V bipartite settlement dated 14-2-95, which is as follows :—

"If there is any difference of opinion regarding interpretation of any provision of this settlement, the matter will be taken up only at the level of the Indian Banks' Association and the All India Bank Employees' Association and the All India Bank Employees' Association, National Confederation of Bank Employees, Bank Employees Federation of India and Indian National Bank Employees' Federation for discussion and settlement."

Sh. Harish Kapoor, aggrieved personally, raised the present dispute on behalf of the Federation without raising it before the appropriate forum in compliance of the provisions of V bipartite settlement dated 14-2-95. The appropriate person/association should have approached the prescribed forum and primary direct involvement of this Tribunal and the conciliation officer without approaching such forum was barred. I have answered this reference because of the directions of the Hon'ble the High Court that the concerned Labour Tribunal should decide the matter.

Accordingly, I am answering this reference as follows:

1. Sh. Harish Kapoor was not competent to file the complaint on behalf of the Federation and to represent the Federation before this Tribunal in the present reference.
2. Paras 5.282 and 5.326 of Desai Award has no concern with the creation of posts and there is no violation of any right of any member of the Federation, by the act of management, not creating the posts for conferring the specific performance allowance.

Appropriate Government be moved for the publication of award. Thereafter, file be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 25/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-02-2009 को प्राप्त हुआ था।

[सं. एल-38011/1/2006-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 515.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2006) of the Central Government Industrial Tribunal-cum- Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of Paradip Port Trust and their workmen, received by the Central Government on 2-02-2009.

[No. L-38011/1/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
BHUBANESWARPRESENT : Shri N. K. R. Mohapatra
Presiding Officer.

Industrial Dispute Case No. 25/2006

Date of Passing Award-21st November 2008

Between :

The Management of the Chairman,
Management Committee, Paradip Port Trust,
CF & H Scheme, Paradip, Orissa-754 142.

... 1st Party-Management

AND

Their workmen represented through the
The General Secretary, Utkal Port & Dock
Workers' Union, Brundaban Colony Housing Complex,
Paradip Port, Paradip, Orissa-754 142.

... 2nd Party-Union

APPEARANCES

Shri Saroj Misro, : For the 1st Party-Management
Chairman,
Management Committee.

Shri B. N. Moharana : For the 2nd Party-Union.

AWARD ON MAINTAINABILITY OF THE
REFERENCE (ISSUE NO. 1)

The Government of India in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the dispute for adjudication vide their Order No. L-38011/1/2006-IR(B-II), dated 11-10-2006.

2. After receipt of the reference both the parties filed their respective claim statement and written statement and accordingly various issues were framed. Out of these issues, Issue No. 1 relating to maintainability of the case was taken up first.

3. While considering the above issue, the complex nature of the reference became the centre of discussion. In this regard the Union advanced the argument that the Government is competent to make any reference of an Industrial Dispute under Section 10(1) of the Industrial Disputes Act together with such other matters connected thereto and under Section 10(4) the Tribunal while adjudicating such dispute can also decide such matters that are incidental to such dispute or matter connected with such dispute and as such the reference in the present form is maintainable in the eye of law. The Management instead of elaborating its stand simply left the matter to be decided by the Tribunal.

4. For the above, the reference in question needs to be reproduced as under.

"Whether the demand made by the Utkal Port & Dock Workers' Union Paradip that 125+114 standby workers of standby list, now listed under CF & H Scheme are entitled to be paid at the same rate of wages as fixed for and paid to the workers who are members of Paradip Port & Dock Mazdoor Union is justified and legal? Whether not providing job to these 125+114 erstwhile standby workers now listed in 1994 Scheme during 1995 to 8-3-1996 amounts to illegal lay-off? If so, whether they are entitled for guaranteed wages of 12 days per month, wage for the weekly off days/holidays along with attendance allowance @ 1/60th of monthly wages for the said period and what other relief are the workmen concerned entitled to".

5. In the case between State of Bombay-Versus-(K.P.) Krishna reported in 1960-II-LLJ-592 SC it has been held by their lordship that orders of reference should be made to the Authorities in accordance with the provisions of Section 10(1) of the Industrial Disputes Act. If the order is contrary to the provisions of Section 10(1) in the matter of selecting the appropriate authority, the order shall be invalid. Likewise in a case between workmen of Hercules Insurance Co. Limited-Versus-Hercules Insurance Co. Ltd., reported in 1961-I-LLJ-249 it has been held by the Apex Court that where the reference is inconsistent with the statutory provisions of Section 10, it would be invalid.

6. Now while judging the reference in the back-drop of the above findings of the Hon'ble Court it appears that the reference is in two parts and it is in regard to two distinct subjects. While the first part is in regard to payment of wages to a Section of workers at par with another section of workers, the second part deals with another subject relating to illegal lay-off and its consequential relief and as such the second part can not be said to be a matter connected with the first part. It should be remembered that the term "any matter appearing to be connected with or relevant" as appearing in Clause (b), (c) and (d) of Section 10(1) is not synonymous with the term "matters incidental thereto" as appearing in the concluding lines of sub-section 4 of the Section 10 of the I.D. Act. As per the requirement of clause-(b), (c) and (d) of sub-section (1) of Section 10 the Government while making a reference of an Industrial Disputes can also include certain other matters appearing to be connected with or relevant to such dispute. Whereas under section 10(4) the Tribunal has been asked to confine its findings to the points of dispute and matter that are considered incidental to those points. Therefore, the matters that follow the second part of the reference can only be considered as matters incidental to the said part but neither the same nor the second part of the reference as a whole can be regarded as a matter "connected with or relevant to" the first part of the reference, each part being separate and distinct on subject from the other.

7. In view of the same when the reference has not been made strictly in accordance with the requirement of Section 10(1), and the second part of the reference not being a matter connected with the first part, it is held that the Tribunal lacks its jurisdiction to adjudicate the reference in its present form the same being contrary to the requirements of Section 10(1) of the I.D. Act.

8. For the findings given above the other issues are left unanswered.

9. The reference is disposed of accordingly. It is however open to the Government to make separate individual references in respect of item No. 1 and 2.

Dictated and Corrected by me.

N.K.R. MOHAPATRA, Presiding Officer

नई दिल्ली, 2 फरवरी, 2009

का.आ. 516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 151/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2009 को प्राप्त हुआ था।

[सं. एल-12012/190/2000-आई आर (बी-11)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 2nd February, 2009

S.O. 516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.151/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 2-2-2009.

[No. L-12012/190/2000-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I. D. 151/2001

Sh. Ramesh Kumar S/o Sh. Tulsi Ram, Vill. & P.O. Sarna,
Pathankot-145025, (Punjab)

... Applicant

Versus

Allahabad Bank The Regional Manager, AB, Regional
Office, 2nd Floor Civil Lines, Jalandhar (Punjab) 144001.

... Respondent

APPEARANCES

For the workman : Workman in person

For the management : Sh. R.S. Rathee

AWARD

Passed on:- 20-1-2009

This reference is an example of making a simple issue controversial by moving unnecessary pleadings, representations, appeals and notices by the parties. Simple matter for adjudication before the Tribunal is the effect of non-compliance of the transfer order dated 17-10-88. The workman was transferred vide letter No. ROCH/ADM/39/1540, dated 17-10-88, from Pathankot branch to SagarPura Branch. On transfer, the workman did not join his duties at SagarPura Branch of Allahabad Bank, but opted to challenge the transfer order by raising an industrial dispute in the office of ALC (Jammu), who in turn sent the failure of conciliation report to Government of India. But the Government of India refused to make a reference. It is hereby made clear that the issue of refusing to make a reference by the Government of India has not been agitated before this Tribunal, nor this Tribunal is competent to question the same. Thereafter, the workman filed a civil suit challenging his transfer in the Court of First Sub-Judge (Second Class), Pathankot, which was dismissed on jurisdictional issue. The workman against the order of First Sub-Judge (Second Class), Pathankot, dated 25-3-94, preferred an appeal before the first Additional District Judge, Gurdaspur, which was also dismissed on merits. It is the contention of the management that on both of the occasions, namely declining the Government of India to make a reference and dismissing the appeal of the workman by the first Additional District Judge, Gurdaspur, the workman by a written notice was asked to join the bank at its SagarPura Branch, he failed and remained absent from the duties. Thereafter, vide letter No. Karnik/1/58/1747 dated 20-3-98, a charge sheet was issued to the workman which was received by him on 27-3-98. He submitted his reply on 27-3-98. He further submitted a supplementary reply on 21-4-98. Both of the replies were found unsatisfactory by the disciplinary authority, and accordingly, disciplinary authority ordered a departmental enquiry against the workman. The enquiry officer conducted the enquiry. Opportunity of being heard was given to the workman and management, and thereafter he submitted his report on 31-7-99. The disciplinary authority issued a show cause notice to the workman with the proposed punishment.

The workman, instead of submitting the written representation to the disciplinary authority on proposed punishment, preferred an appeal to the appellate authority. This appeal was dismissed with advice to the workman to submit the representation on show-cause notice. The workman represented in detail and the disciplinary authority, after affording the opportunity of personal hearing, passed the punishment order dated 28-3-2000. In its punishment order, the disciplinary authority removed the workman from the services on both of the charges.

The workman preferred an appeal and took a technical issue that Regional Office, Chandigarh was bifurcated on 27-3-2000 and the branch of his posting came under administrative control of Regional Office, Jalandhar. The punishment order passed on 28-3-2000 by the disciplinary

authority at Chandigarh, lacks territorial jurisdiction. The appellate authority, on this technical issue set aside the punishment awarded to the workman and directed the appropriate authority to take necessary action. Thereafter, the workman moved an application permitting him to join at Pathankot on 3-7-2000. He also made a representation to General Manager (appellate authority) New Delhi, seeking his intervention permitting the workman to join his duties at Pathankot branch of Allahabad Bank. This representation was moved on 24-7-2000. The workman again raised an industrial dispute and the Conciliation Officer/Assistant Labour Commissioner (C) Jammu served a notice upon the General Manager, Allahabad Bank on 4-9-2000 asking the management of the bank to represent in the conciliation proceedings on 29-9-2000. The disciplinary authority again passed an order dated 10-11-2000 awarding the punishment of removal from service on both of the charges.

On failure of conciliation, the Central Government referred the reference vide Notification L-12012/190/2000 IR (B-II) New Delhi, dated 28-03-2001, for adjudication to this Tribunal which runs as follows :-

“Whether the action of the Regional Manager, Allahabad Bank, Jalandhar in imposing punishment of removal from service upon Shri Ramesh Kumar, Clerk-cum-Typist vide his order dated 10-11-2008 is fair just and legal? If not, what relief the workman is entitled and from which date?”

At every stage, whether it is the stage of issuing charge sheet, conducting the enquiry proceedings by the enquiry officer, issuing show-cause notice to the workman and the previous punishment order dated 28-3-2000, which was later on set aside by the appellate authority on jurisdictional issue, detailed representation were moved by the workman on very minute technical, non-technical, legal and on other grounds. If representations are counted in pages those are several dozens in number, whereas, the issue was very simple one. Workman was asked to comply with the transfer order dated 17-10-88. The workman has raised the issue of legality of transfer before several forums unsuccessfully. It is the contention of the workman that he has wrongly opted one of the forum to challenge his transfer. The management cannot be held responsible for wrongly opting the forum by the workman. The workman has taken very long time in challenging his transfer from Pathankot Branch to Sagarpura Branch and thereafter, when he was issued the charge sheet, he challenged the issuance of charge sheet on the ground of abnormal delay of 9 years. He has tried to justify his contention that the judgements/orders passed by the wrong forums are not binding on him, hence, no weightage can be given on the decisions of such forums. It is true that the decisions taken by a forum having no jurisdiction will not be having the binding force, but it is open for this Tribunal to consider the time taken by these forums while considering the plea of the workman on issuing the charge sheet after delay of 9 years. The delay was consequent to the act of the workman by challenging his transfer order before the different forums unsuccessfully. It is not open for the workman to challenge the charge sheet on the ground of delay.

From the representations, statement of claim, affidavits, cross-examination and other materials on record including enquiry proceedings and the report, I am of the view that the main contention of the workman is that there has been a violation of principle of natural justice by the enquiry officer while conducting the enquiry and the disciplinary authority while awarding the punishment. It is also the contention of the workman, subject to discussion while answering this reference, that disciplinary authority and the enquiry officer acted biasedly while conducting the enquiry and passing the order of punishment. For rest of the contentions, which in my opinion, cannot be counted on tips of fingers, I am of the view that workman has become over-sensitized while moving several representations.

As stated earlier, that workman was transferred from one branch to another. He raised the issue of legality of transfer before two forums unsuccessfully. Even after affording the opportunity to join on the new branch, he continuously absented for a very long time. It was a valid cause for the management to issue a charge sheet for his alleged misconduct for making unauthorized absent and for non-compliance of the orders of the superiors regarding his transfer. Proper opportunity was given to reply the charge sheet. Workman replied the charge sheet twice. He participated in the enquiry proceedings and was afforded all possible opportunity of being heard by the enquiry officer. I have gone through the report of the enquiry officer and other materials on record which makes it clear that all possible opportunity of being heard was given to the workman. It is within the purview of the enquiry officer or the disciplinary authority to provide the opportunity of being heard and it is not within their purview to compel the workman to avail this opportunity of being heard. It is stated by the workman that he attended the enquiry proceedings under protest. It was his perception that he attended the enquiry proceedings under protest but for enquiry officer's point of view, it was a fair, proper and reasonable opportunity afforded to the workman at every stage of the enquiry proceedings.

On persusal of the enquiry report, it is clear that detailed enquiry report has been submitted by the enquiry officer on each and every point raised by the workman.

Contention of violation of principle of natural justice should be coupled with specific instances which resulted in such violation. He must also prove the prejudice caused to him by such violation. The workman, in all his representations has only mentioned that enquiry officer acted arbitrarily, illegally etc. with other such terminology from the dictionary without mentioning the specific instances which lead to the violation of principle of natural justice and the prejudice caused to him by such violation. The workman has also mentioned few sentences and the paragraphs from the judgement of Hon'ble the High Courts and the Apex Courts on the implication of violation of principle of natural justice, but failed to specify any instance which proved the violation of principle of natural justice and the prejudice caused to him.

After considering all the facts and circumstances of the case, enquiry report and other materials on record, I am

of the view that enquiry officer conducted the enquiry in a fair, proper and reasonable manner and there has been no violation of any rules of principle of natural justice.

Conducting the enquiry in a fair and reasonable manner is a different issue than the decision making of the enquiry officer while submitting the enquiry report. Perversity of judgement can be questioned, even if, the enquiry has been conducted in a proper, fair and reasonable manner. As stated earlier that a simple issue of non-compliance of the transfer order has been made by the workman so complicated by presenting so many representations on several grounds. There was a transfer order in effect. Its operation was not stayed by any forum of competent jurisdiction. Whatever may be the nature of transfer order, it was duty of the workmen to comply with and to join at the new place of posting, but he failed even after getting so many opportunities for joining on new place of posting. Thus, there is no iota of evidence which proved before the enquiry officer that the transfer order passed by the competent authority was not in operation and its implementation was stayed by a competent forum.

As the workman failed to join the new place of posting, the enquiry officer after affording the proper, reasonable and fair opportunity to the workman, rightly submitted the report with the finding on both of the charges as well proved. Thus, I have no occasion to question the decision making of the enquiry officer while deciding both of the charges enumerated in the charge sheet. After the enquiry report, disciplinary authority served upon a notice with proposed punishment. The workman, instead of replying the show-cause notice, preferred an appeal which was dismissed by the appellate authority with the direction to present his representation on show-cause notice. The workman filed the detailed representation and after perusing every point of representation, the disciplinary authority awarded the punishment of removal from the services on both of the charges vide order dated 28-3-2000.

The workman preferred an appeal against the order dated 28-3-2000 and a technical objection was raised that on bifurcation of the office on 27-3-2000, disciplinary authority/Assistant General Manager, Chandigarh was not competent for awarding the punishment. The appellate authority on this very technical issue also became over-sensitive and set aside a well reasoned order of punishment on the ground that on account of bifurcation of the office dated 27-3-2000, disciplinary authority at Chandigarh was lacking in territorial jurisdiction.

I have a different view. The appellate authority had been over sensitized while setting aside such a well reasoned order on highly technical ground. Before bifurcation order disciplinary authority at Chandigarh has afforded all possible opportunity of being heard and the file was reserved for orders. Once the file was reserved for orders, the bifurcation of territorial jurisdiction will be having no effect on the punishment order passed by disciplinary authority at Chandigarh. As this issue is not before this Tribunal, nor this Tribunal is competent to question suo motu on setting aside the dismissal order by appellate authority, I am bound, while answering this reference, by

the order of appellate authority setting aside the punishment awarded by disciplinary authority at Chandigarh dated 28-3-2000.

Now this Tribunal has to consider what shall be the effect of setting aside of order dated 28-3-2000? Whether it will amounted to the reinstatement of the workman into the services as claimed by him? Service jurisprudence is very clear on this issue. The appellate authority has set aside the punishment order only and not the charge sheet, enquiry proceedings and enquiry report. In enquiry report, both of the charges against the workman have been held to be well proved. Thus, the effect of setting aside order dated 28-3-2000 will be that the competent disciplinary authority could pass the order of punishment afresh after affording the opportunity of being heard to the workman.

It is also the contention of the workman that the disciplinary/Regional Manager, Jalandhar has not afforded the opportunity of being heard before passing the order of punishment dated 10-11-2000. On perusal of the materials on record, it is established before this Tribunal that a detailed representation was given by the workman which was on file of the Regional Manager/disciplinary authority to consider the view point of workman. It is true that a formal notice of being heard was not given to the workman by the disciplinary authority Jalandhar, but the workman has failed to prove that he has something more to say apart from the representation he has given to the disciplinary authority at Chandigarh and any prejudice was caused for non-issuing fresh notice of being heard by the disciplinary authority, Jalandhar, before awarding the punishment of removal from the services on both of the charges of misconduct on 10-11-2000.

In between the order of appellate authority setting aside the removal order dated 28-3-2000 and the punishment order dated 10-11-2000, the workman has raised the industrial dispute in the office of Assistant Labour Commissioner, Chandigarh and Assistant Labour Commissioner, after taking cognizance on demand notice has served a notice on the management of Allahabad Bank fixing a date for conciliation. Undoubtedly, during the conciliation proceedings, disciplinary authority at Jalandhar passed the punishment order dated 10-11-2000. The workman has challenged this order under Section 33 of the Industrial Disputes Act, on the contention that during conciliation proceedings, the disciplinary authority was not competent to pass the punishment order without permission of the Competent Court. The workman has relied the law laid down by Hon'ble the Apex Court in Jaipur Zila Sahkari Bhumii Vikas Bank Ltd. vs. Ram Gopal Sharma (2002) SCC (L&S) 279. I have gone through the case law referred and relied upon by the workman. I am of the view that the law laid down by Hon'ble the Apex Court is not applicable in the present case because in the case before Hon'ble the Supreme Court, the proceedings were pending before Industrial Tribunal whereas, in the present case the conciliation proceedings were pending before conciliation officer/Assistant Labour Commissioner, Jammu and in my view the protection under Section 33 is only available when any proceeding is pending adjudication before the

Industrial Tribunal or Labour Court. Thus, the plea taken by the workman under Section 33 is not acceptable.

As stated earlier, enquiry was conducted by the enquiry officer in a reasonable, proper and fair manner and there has been no violation of any principle of natural justice. No prejudice was caused to the workman by any act of the disciplinary authority. Accordingly, I am of the view that he was, for his misconduct, rightly removed from the services. The bank has recruited the workman for certain specific jobs. As a consideration to this job, he was paid his salary. Without legal cause, the workman absented from the bank for a long time. It not only affected the working conditions but discipline of the institution as well. Moreover, I am of the view that there should be a 'ZERO TOLERANCE' in case of inaction. The workman, without any justification unauthorisedly absented from the bank, he has rightly been removed from the services of the bank.

The reference is answered accordingly. Appropriate Government be informed. Thereafter, file be consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2009

का.आ. 517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 52/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-02-2009 को प्राप्त हुआ था।

[सं. एल-17011/6/1999-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 3rd February, 2009

S.O. 517.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/1999) of the Central Government Industrial Tribunal-cum- Labour Court, Kolkata now as shown in the Annexure, in the Industrial Dispute between the management of The Sr. Divisional Manager, LIC of India Divisional and their workmen, received by the Central Government on 03-02-2009.

[No. L-17011/6/1999-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA

Reference No. 52/1999

Parties : Employers in relation to the management of Life Insurance Corporation of India

AND

Their workmen.

Present : Mr. Justice C.P. Mishra, Presiding Officer.

APPEARANCES

On behalf of the : Mr. D.K. Paul, Advocate.
Management.

On behalf of the : Mr. R.N. Paul, Advocate.
Workmen

State : West Bengal.

Industry : Insurance.

Dated : 19th January, 2009

AWARD

By Order No. L-17011/6/99/IR(B-II) dated 30-11-1999 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of LIC of India in not absorbing the services of S/Shri. Amarnath Sharma, Mahendra Mukhia and Sanjay Chhetri in the cadre of Group 'D' employee is just, fair and reasonable? If not, to what relief the workmen are entitled?"

2. This reference has been made at the instance of Chaya Kaman Shramik Shang, hereinafter to be referred as the union. Statement of claim, however, has been filed under the signatures of the three concerned workmen as mentioned in the schedule of reference. The case of the workmen as it appears from the statement of claims in short is that the Life Insurance Corporation of India, hereinafter to be referred as the Company is a Government of India Undertaking and it has got its business all over India and also has got a Branch at Jalpaiguri in the name and style of L.I.C. of India, Darjeeling Branch in the District of Darjeeling wherein the concerned workmen, namely, S/Shri Amarnath Sharma, Mahendra Mukhia and Sanjay Chhetri were given employment by the Branch Manager on 23-3-1990, 30-07-1990 and 01-01-1992 respectively as Class IV employees in Group 'D' cadre on daily wage basis @ Rs. 70 per day. They had been serving under the Company from their respective dates of joining continuously and without any break and were discharging their duties to the entire satisfaction of the management. They all were maintaining clean, spotless, unblemished and meritorious record during the tenure of their respective services With utmost perfection and sincerity, but all on a sudden the management of the Company terminated their services with effect from 11-11-1998 without assigning any reason whatsoever. Immediately the workmen through the union moved the Assistant Labour Commissioner (C), Kolkata and the issue was settled through the proceedings held on 30-12-1998 and the management of the Company re-engaged them with effect from 01-01-1999 in accordance with the terms and conditions as laid down in the aforesaid proceedings dated 30-12-1998 as per settlement. The workmen had to accept the said terms and conditions as laid down in the aforesaid settlement in which the number of days of work has been reduced to 15 days per month in order to sustain their living at any cost, although the Company can provide them work on all working days in a month. The

concerned workmen had been performing their duties in the permanent or perennial nature of job since the date of their joining continuously for more than 240 days every year, alternatively on all working days per month. The concerned workmen and their union raised claim for regularization before the management, but finding no other alternative an industrial dispute was raised before the Assistant Labour Commissioner (C), Kolkata. The conciliation proceedings were held which ended in failure due to uncompromising and adamant attitude of the Company and ultimately the matter has been referred to this Tribunal for adjudication. It is alleged that the Company does not follow the laws of the land in respect of the labour matters and indulges in unfair labour practices and victimization while administering the discipline in the industry. According to the workmen they have got the right to get regularization in their respective jobs and benefits, facilities and other terms and conditions of service which are enjoyed by the other regular workmen of the Company doing same nature of Job and there should not be any discrimination in service condition between the two sets of the workmen. The services rendered by the concerned workmen are essentially indispensable in the interest of running the administration of the Company as they are retained for a long and continuous period without any break. It is accordingly prayed that the Company be directed to absorb and regularize all these concerned workmen in the service in Group 'D' cadre.

3. The Company filed a written statement denying claim and contentions of the workmen. It is stated in the written statement that the reference is not maintainable as the employees are not workmen within the meaning of the Industrial Disputes Act, 1947. The claim of the employees is also stated to be not maintainable in the facts and circumstances of the case and also in law. Regarding the facts it is the case of the management that the concerned workmen were neither given any offer of employment nor served with any appointment letter. They worked as casual daily labourers in the office and were paid @ Rs. 7.42 per hour. They were not terminated as they were never recruited. However, these casual workers were engaged for a long time. After recruitment of Class IV employees in the month of October, 1998 the management did not have any need for these people for full month's engagement. These concerned workmen could not pass the test held in the month of May, 1998 and as such there was/is no scope to recruit them under any circumstances. Regarding the settlement it is stated that the attempted adjudication at Darjeeling on 30-12-1998 was under tense condition and there was failure report on 27-05-1999 at Siliguri meeting and there was no settlement. The company has denied and disputed the averments of the workmen in seriatim.

4. A rejoinder is also filed by the workmen denying the contentions of the Company and also reiterating its claim and contentions made earlier in its statement of claims.

5. All the three concerned workmen have been examined on behalf of the workmen. WW-1, Amarnath Sharma has stated in his evidence that he joined the Company on 23-05-1990 as a Peon in Group-D on daily

wages basis and in addition to that he also used to work as an Assistant. He worked in total for more than 240 days. He worked there till 10th November, 1998. He used to get Rs. 74 per day earlier and at the time of his last working Rs. 94 per day. He has referred to the chart filed showing the number of days for which he had worked in a particular month and particular year. Neither any charge sheet nor any show cause or notice was issued to him before his removal from service. He had filed representation to the management for his regularization/absorption in service in Group-D Peon. He has also stated that his father was working in the Company who died in harness. He has further stated that there was an agreement before the conciliation authority to the effect that they shall be engaged for 15 days in a month. They were ordered to be paid @ Rs. 115 per day and in total Rs. 1725 for 15 days. According to him it was agreed that this arrangement to continue till the disposal of the reference of dispute. He has also stated that he was working in a permanent post and demanded absorption in regular service. In cross-examination the witness has stated that he neither applied for service nor received any appointment letter at the time of entry into the service. He has also stated that he did not file any petition for appointment on compassionate ground after the death of his father in 1982. He has admitted that on 3rd May, 1998 a test was taken for the persons working on daily wage for regularization of their services and he appeared in the test, but did not pass the same.

WW-2, Mahendra Muljia has stated in his evidence that he joined the Company on 30th July, 1990 in Class-IV cadre as a Peon on daily wage basis and he was removed from service on 11-11-1998. He was getting Rs. 7.42 per hour and he used to work for 8 hours daily. He used to work for more than 240 days in a year and also used to get Rs. 2000 per month. He has further stated that the post on which he has been working is of permanent nature and he made prayer before the management for absorption in Class-IV. He has also stated about the agreement before the conciliation authority in the same line of WW-1. In cross-examination this witness also admitted that there was a test taken for regularization on permanent post on 3rd May, 1998 and he participated in the said test, but did not pass the same.

WW-3, Sanjay Chhetri has stated in his evidence that he was engaged in the Company on 01-01-1992 in Class-IV Group-D category as sub-staff, but removed from the service on 11-11-1998. Earlier he used to get Rs. 72 per day and at the time of his removal he used to get Rs. 94 per day. His further evidence is similar to the evidence of other two witnesses. In cross-examination this witness has stated that the total number of employees in his office is 45 to 50 and 6 persons working as Class-IV or Group-D employees. There are 4 permanent employees and they are not included in that 4. He has stated that since January, 1999 he is working in the Company after the agreement before the conciliation officer. He has admitted that he neither received any appointment letter nor notice of termination. He has also admitted that he had participated in the test taken on 3rd May, 1998 for absorption in permanent cadre, but did not pass. Some persons have passed in that test and they have been appointed.

6. On the other hand, MW-1, N.T. Bhutia an Administrative Officer at Jalpaiguri Divisional Office of the Company is the sole witness for the Company in this case. At the relevant time he was Administrative Officer in the Personnel & Industrial Relations Dept. of the said Divisional Office. He has stated in his evidence that the three concerned workmen used to work on daily wage basis in the Company at that time. No appointment letter was given to any of these three persons. They were engaged on the basis of need and because of non-availability of work, they were discontinued. The question of termination of their services did not arise. He has further stated that on 3rd May, 1998 a test for recruitment of Group-D staff was held and these persons had also appeared in that test, but they did not succeed. The successful candidates were selected and appointed. He has also stated that at present there is no vacancy in this category of job. According to him the recruitment of all types in the Company is governed by the instruction of 1993. In cross-examination the witness has stated that he knew the concerned workmen as they were working on daily wage basis. He has also stated that these persons are still being given casual engagement, but there is no requirement. He has denied that their services were terminated on 11-11-1998. He has further stated that because there is no rule for their absorption, they have not been absorbed. He, however, does not know whether the recruitment rules have been filed in this case.

7. Some documents have been exhibited on behalf of the workmen. Ext. W-1 is the joint letter of the concerned workmen dated 16-11-1998 addressed to the Regional Labour Commissioner, Kolkata regarding the alleged termination of their services, Ext. W-2 is the letter of the Assistant Labour Commissioner (Central), Kolkata dated 04-12-1998 addressed to both the parties on the same subject, Ext. W-3 the joint letter of the concerned workmen dated 12-12-1998 addressed to the Chairman of the Company, Ext. W-4 is the proceedings dated 30-12-1998 held by the Assistant Labour Commissioner (Central), Kolkata in the matter in question. Ext. W-5 is the letter of the Assistant Labour Commissioner (C), Kolkata dated 12-04-1999 addressed to both the parties on the industrial dispute over alleged termination of services of the concerned workmen, Ext. W-6 is the proceedings of meeting dated 27-05-1999 held before the Assistant Labour Commissioner (C) on the above subject. Ext. W-7 is the report of failure of conciliation dated 31-05-1999 in the matter in question. Ext. W-8 is a certificate issued to the concerned workmen which was signed by various persons. Ext. W-9 is a letter dated 15-12-1999 written by the President of the Shramik Sangh to the Branch Manager, Darjeeling Branch of the Company in respect of the concerned workmen. Ext. W-10 is a certificate issued to the concerned workmen by one Amarnath Ghosh, Ext. W-11 marked collectively are the attendance register of the concerned workmen, Ext. W-12 are the monthly statements of part-time/temporary and daily wage employees of Darjeeling Branch of the Company and Ext. W-13 is the certificate issued to Amarnath Sharma one of the concerned workman by the Branch Manager, Darjeeling Branch of the Company. The management, however, choose not to exhibit any document on its behalf.

8. On the perusal of the aforesaid facts and evidence led on behalf of either side it is evident that this reference relates to the claim of the three workmen against the management of LIC for not absorbing the services of these persons in the cadre of Group-D as per their claim made in this connection. According to the workmen they were appointed by the Branch Manager of LIC as Class-IV employees in Group-D cadre on daily wage basis and had been serving their from their respective date of joining continuously without any break. However, the management terminated their services with effect from 11-11-1998 without any reason and so the workmen had raised the dispute through their union before the ALC(C), Kolkata and the issue was also settled through the proceedings held on 30th December, 1998 and the management reengaged them with effect from 1st January, 1999. The concerned workmen all along had been performing their duties in permanent and perennial nature of jobs since the date of their joining continuously for more than 240 days every year and they are still so working there as a result of settlement dated 30th December, 1998 vide Ext. W-4 in this regard. They have got the right as such for regularization in their respective jobs and other benefits and facilities etc. like other regular employees of the Company doing same nature of job and there should not be any discrimination in service conditions between the two sets of workmen and therefore, they have prayed that the Company be directed to absorb and regularize all the three workmen in their services in Group-D cadre.

9. Learned Advocate for the workmen has also filed his written notes of argument in this connection and submitted that the workmen filed evidence showing the period of work done by them for the period March, 1990 to December, 1998. However, the management has not filed any paper in rebuttal to show the claim of the workmen to be otherwise and as such as laid down in *H.D. Singh v. Reserve Bank of India & Ors.*, AIR 1986 SC 132 the evidence of the workmen is to be accepted as true and correct that they all had worked for more than 240 days and as such are legally entitled to be considered for their regular appointment in the Company. He has also referred to the case laws laid down in *Haryana Urban Development Authority v. Devi Dayal*, 2002-II-LLJ-265; *M/s. Tanwar & Footwear Corporation of India v. Raj Kumar & Anr.*, AIR 2002 SC 508 and *Executive Engineer, Electricity Distribution Division, U.P. State Electricity Board, Bareilly v. Hydra Electric Employees Union & Ors.*, AIR 1999 SC 1520 and submitted that since the workmen had worked for more than 240 days in a year before termination of their services, such termination of services without payment of compensation etc. is illegal and as such they are entitled to be reinstated in service with all the benefits arising therefrom. I have considered the submissions of the learned Advocate for the workmen and the case laws cited by him in this connection. It is evident that the workmen in this case have no doubt worked for more than 240 days for several years but the facts of this case are quite different as in this case no such order of termination was ever passed against the workmen, but they had also been given a chance to appear in the test so held for this purpose to be appointed

through a regular process of selection under the rules. They, however, did not qualify therein and so the question of their permanent absorption or regularization does not arise in the present set of facts and circumstances of this case nor the case law is so applicable in their case as it is so argued on their behalf. Even if the workman might have worked for more than 240 days in a year for several years on adhoc basis, they do not acquire any legal and substantial right as such to be so considered for their regular or permanent absorption on this ground alone as the legal position is now well settled with the decision of the Hon'ble Apex Court as laid down in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.*, (2006) 4 SCC 1.

10. Management, however, has challenged the aforesaid facts and claim and contentions of these workmen by submitting that the concerned workmen were never given any such employment like that of regular employee through any appointment letter by getting them recruited as per test held in this regard. They were just engaged on casual basis on payment of wages @ Rs. 7.42 per hour. There is no question of termination of their services as they have not been so recruited under the rules. They also could not pass the test held in the month of May, 1998 and as such there was no scope for their recruitment permanently in Class-IV cadre of the Company as it has been so claimed by them in this regard. The question of any regularization or absorption as such does not arise as there is no sanctioned post nor they were ever so recruited under the Recruitment Rules of 1993 of the Company which could confer any such right or status upon them to be so absorbed. In this connection they have also cited the recent decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.*, (2006) 4 SCC 1 wherein the principle of law applicable for such recruitment regularization, absorption etc. has been laid down by saying that a regular process of recruitment or appointment has to be resorted to when regular vacancies in the post at a particular point of time are to be filled up. Filling up of regular vacancy cannot be done in a haphazard manner or based on patronage or other consideration. Regular appointment must be within the rules. In paragraph 43 of this decision the Hon'ble Apex Court has clearly made observation to this effect as under :

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the over looking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, the Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at

the end of the contract, if it were an engagement or appointment on daily wage or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employee who by the very nature of their appointment, do not acquire any right."

11. In view of the above settled legal position the matter has to be considered one way or the other as submitted on behalf of the either side in respect of the relief claimed on behalf of the workmen for absorbing them in the service of the LICl or otherwise in this regard.

12. The evidence led on behalf of the workmen itself goes to show that they had not been appointed after having passed any test held for this purpose. On the other hand, they did not qualify in the test held by the Company so that they could have been legally appointed as per recruitment rules in this regard. WW-1, Amar Nath Sharma in cross-examination himself has admitted that he neither applied for service nor received any appointment letter at the time of entry into the service. It is also admitted by him that on 3rd May, 1998 a test was taken for regularization of the persons who had worked on daily wage, but he did not pass the test. So also it has been stated by the other workmen, WW-2, Mahendra Mukhia and WW-3, Sanjay Chhetri showing that they all had participated in the test for absorption but they could not pass and some persons who had so appeared and passed in the test had also been appointed in this connection. So far as their continuance in the service as per agreement, Ext. W-4 during conciliation proceedings before the ALC(C), Kolkata is concerned, this does not confer any substantial legal right in their favour to be so considered for their absorption in the service as bypassing the recruitment rules itself as any such appointment or absorption can only be made through proper selection process under the rules and not otherwise.

13. In view of the aforesaid facts and circumstances the question of absorbing the services of the three concerned workmen in the cadre of Group 'D' employee under the LICl does not arise. The workmen accordingly are not entitled to any relief.

The reference is answered accordingly.

Dated, Kolkata,

The 19th January, 2009.

C.P. MISHRA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2009

का.आ. 518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध निम्नलिखित और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या 229/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2009 को प्राप्त हुआ था।

[सं. एल-12012/39/2000-आई आर (बी-II)]

राजेंद्र कुमार, डेस्क अधिकारी

New Delhi, the 3rd February, 2009

S.O. 518.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No.229/2000 of the Central Government Industrial Tribunal-cum-Labour Court, No.1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 3-2-2009.

[No. L-12012/39/2000-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of a reference Under Sec. 10(1) (d) (2A) of the Industrial Disputes Act, 1947

Reference No. 229 of 2000

Employers in relation to the management of Canara Bank

AND

Their Workmen

Present : Shri H.M. Singh, Presiding Officer.

APPEARANCES

For the Employers : Shri F. Ahmad, Advocate.

For the Workmen : Shri D. K. Jha, Advocate.

State : Bihar. Industry : Bank.

Dated the 24th November, 2008

AWARD

By Order No. L-12012/39/2000-IR (B-II) dated 11-8-2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Canara Bank in dismissing the services of Shri Satvendra Kumar Sinha, Clerk w.e.f. 28-7-1998 is justified? If not, what relief the workman is entitled to?"

2. As per written statement of the workman it has been stated that he was appointed as a clerk and joined service in Canara Bank, Siwan Branch with effect from 31-8-1986 as a clerk with entire satisfaction to all concerned on regular basis. The workman was falsely implicated in a fraudulent transaction relating to S.B. Account No. 24389 of withdrawal of amount of Rs. 30,000 pertaining to Indrashwan Prasad of Village Jaijore. The management of Canara Bank suspended the workman vide order dated 23-8-97 in contemplating of disciplinary proceedings, and charge-sheet was issued on 23-8-97 levelling two points charges alleging gross misconduct within the meaning of Clause (j) Regulation 3 Chapter-XI of Canara Bank Service Code and (2) prejudicial to the interest of the Bank under clause (m) of the said Regulation of the Bank. The management ordered for holding domestic enquiry and appointed Shri H. R. Mishra, Senior Manager of the Bank as Enquiry Officer and Shri Sanjay Kumar Singh, Law Officer, Divisional Office, Patna as presenting officer vide order dated 24-12-97. The management appointed Enquiry Officer and presenting officer before the receipt of reply to the charges levelled in the charge-sheet. The workman requested the management to grant time vide representation dated 9-9-97 in reply to the management's letter dated 23-8-97. Even in the absence of reply to the charge-sheet of the workman the enquiry proceeded. The Enquiry Officer fixed the date for holding domestic enquiry proceedings for 6-2-98 at Siwan Branch for which notice was issued on 21-1-98. The Enquiry Officer of his own changed the nature of enquiry from regular to preliminary vide letter dated 29-1-98 and fixed a date for holding of enquiry for 9-2-98 and also changed the venue of holding enquiry from Siwan to Patna. On 9-2-98 the workman presented himself in the preliminary proceeding held in the Circle Office, Patna and denied the charges levelled in the charge-sheet. In the course of preliminary proceeding there was no presenting officer, no witness, no documentary evidence to prove charges levelled against the workman. The workman had given consent to Sri R. M. P. Misra, Asst. Assistant of the Bank to defend the workman in the preliminary enquiry.

On the date of preliminary enquiry on 9-2-98 as there was no presenting officer to present the case of the management, record of proceedings could not be made. Shri R. P. Mishra and Shri H. R. Mishra, Enquiry Officer held some discussions and decided to write to the management in matter of exonerating charges levelled against the workman and the Enquiry Officer inducted the workmen to sign on a paper which was stated to be the proceeding of the preliminary enquiry in which he had recommended for exonerating the charges levelled against the workman without disclosing the content and without allowing the workman to go through the said so-called proceedings. The Enquiry Officer did not give a copy of the so-called proceedings to the workman. The workman while awaiting the order of exonerating charges levelled

against him in pursuance of preliminary enquiry dated 9-2-98, he got order for dismissal passed by the Disciplinary Authority vide order dated 28-7-98. Thereafter the workman requested the Disciplinary Authority to supply the copy of enquiry report vide letter dated 18-8-98. In response to letter dated 18-8-98 the Disciplinary Authority supplied the findings of the enquiry officer and failed to supply the so-called proceedings drawn by the Enquiry officer on 9-2-98 which was the basis of the findings of the Enquiry officer. The Disciplinary Authority supplied the finding of the enquiry on 1-9-98 i.e. after the order of dismissal passed on 18-7-98. The finding of the Enquiry officer was false as there was no proceedings of preliminary enquiry on 9-3-98 at all. The statement made by the Enquiry officer that he had asked the C.S.E. about acceptance of charge was far from the truth. When the presenting officer was not present on 9-2-98 how did the Enquiry officer ask the presenting officer for his submission and how did the Enquiry Officer ask him to submit written brief when the Enquiry Officer himself had stated that the presenting officer did not find it necessary to record proceedings on the plea of confession made by the workman, where was the question then? Day to day proceedings do not speak of it with authentication of the parties concerned. Non-supply of the preliminary enquiry report denied the workman the opportunity of making representation against the penalty imposed and this amounted to denial of reasonable opportunity which is a breach of principle of natural justice. The workman after dismissal preferred an appeal to the General Manager, Canara Bank Head Office, Bangalore on 6-9-98. In reply to the appeal preferred by the workman, the Assistant General Manager, Canara Bank vide his letter dated 6/12-10-98 intimated that the Appellate Authority has desired to give personal hearing in the matter and sought for the willingness of the workman to avail opportunity. The workman before attending the hearing before the Appellate Authority requested for a copy of the enquiry report on 9-2-98 wherein the signature of the workman was taken on some paper and of some other persons like the Enquiry Officer, the Presenting Officer and Sri R. P. M. ra vide his letter dated 27-10-98. On receipt of the so-called proceeding dated 9-2-98 the workman made submission on 22-2-99 in writing in the course of personal hearing before the General Manager, Canara Bank, New Delhi for setting aside the order of dismissal and for reinstatement as the enquiry was false. The Appellate Authority turned down the appeal of the concerned workman vide order dated 27-3-99. On refusal to concede the appeal for reinstatement with full back wages, the workman sent demand notice to the General Manager, Deputy General and Chief Manager of Canara Bank at Bangalore, Patna respectively vide letter dated 7/8-6-99. The Appellate Authority vide letter dated 7-7-99 turned down the demand for reinstatement with full back wages of the workman. The workman ultimately raised an industrial dispute before the A.L.C.(C) Patna for his intervention under the provisions of I. D. Act. But the

Conciliation proceeding ended in failure and the Govt. of India, Ministry of Labour referred the matter for adjudication before this Tribunal for adjudication.

3. The management has filed written statement and stated that the concerned workman has been dismissed from service. He has neither right to claim reinstatement from the management nor statutory duty is cast on the management to reconsider the matter in respect of the person dismissed from the services of the Bank where dismissal is on the basis of a duly conducted enquiry in terms of Canara Bank Service Code in compliance with principles of natural justice. It has been stated that the concerned workman while working at Siwan Branch of Canara Bank had unauthorisedly obtained possession of two cheque books with leaves No. 8605061 to 8605070 and 520351 to 520360. On 24-2-1997 it was observed from the Savings Bank Account No. 24389 that there was a withdrawal of Rs. 30,000 by way of cheque No. 8605061 drawn on self and payable to bearer. S. K. Sinha has signed on the back of the cheque and received the cash of Rs. 30,000/-. The said cheque book had neither been noted to the Cheque Book Issue Register nor issued to any customer of the branch. Subsequently on 1-3-1997 another cheque leave No. 520356 for Rs. 30,000/- purportedly signed by Shri Indrashan Prasad, Saving Bank Account holder No. 24389, and drawn on self and payable to bearer and signed by Shri Sinha on the back thereof was presented for payment. The concerned workman has received the payment of the said amount and it was observed that the relevant cheque book was not issued to anyone as per the Cheque Book Issue Register of the Branch, but the said cheque leaves have been entered in Mr. Sinha's own handwriting in the Savings Bank Ledger folio of Sinha's S. B. Account No. 10691 with the branch. On the same day i. e. 1-3-1997, out of the proceeds of the said cheque S. K. Sinha had pushed a DD No. 701478 for Rs. 30,000 on Patna favouring Manish Kumar and Haridwar Bhagat, but since the cheque leaf No. 520356 presented for payment could not be paid on account of the relevant cheque book having not been issued to the particular account holder, Indershan Prasad. The full particulars of the charges are also mentioned in the charge sheet dated 23-8-1997 issued to Sri Sinha. Against the misconduct the Bank initiated departmental enquiry by appointing Enquiry Officer and Presenting Officer. During the preliminary enquiry, the workman admitted the charges unconditionally and also by way of his letter dated 9th February, 1998. The Disciplinary Authority agreed with the findings of the Enquiry Officer and proposed the punishment of dismissal, by according personal hearing to the workman. The workman made his submission which was considered and thereafter the Disciplinary Authority imposed the punishment of dismissal. Against the said order the workman preferred departmental appeal. The Appellate Authority after according the personal hearing and considering his submissions thereon confirmed the punishment as the Appellate Authority did not find any

reasons to interfere. The averments mentioned in para 3 are accepted to the extent that he was working in the Siwan Branch from 31-8-1996. However, the contention of the workman that he had satisfactory record of work performance is contrary to facts. The workman was falsely implicated in a fraudulent transaction relating to S. B. Account is contrary to facts. He accepted the charge-sheet on 1-9-97. The workman vide his letter dated 9-9-97 sought time to submit his reply to the chargesheet. The Competent Authority granted time till 30-9-1997 to submit his reply. Since the workman had not submitted his reply till 23-12-97, the Disciplinary Authority under Regulation 8(2)(B) of Chapter XI of Canara Bank Service Code appointed Enquiry Officer and Presenting Officer. The Bank suspended the workman vide order dated 23-8-97. Since the workman had not submitted his reply to the Disciplinary Authority till 23-12-1997, the Disciplinary Authority initiated enquiry by appointing Enquiry Officer. B. K. Sinha, concerned workman was given several opportunities but he failed to make submissions and therefore Sri Sinha was estopped from contending that the enquiry was commence in the absence of any submissions on the chargesheet. The Enquiry Officer had granted sufficient time to the workman to attend the preliminary enquiry at Circle Office, Patna vide his letter dated 29-1-98. However, the allegation that the Enquiry Officer vide his letter dated 29-1-98 changed the nature of enquiry from regular proceeding to preliminary proceeding is false and the same is hereby denied. The Enquiry Officer had postponed the preliminary enquiry which was scheduled to be held on 6-2-98 to 9-2-98 and the workman had duly participated in the preliminary enquiry alongwith his defence representative without raising any objection at the relevant time. Therefore, the allegations stated herein are contrary to factual position. Having attended the enquiry, the workman cannot claim that the venue and date has been changed without his consent. The averments of the workman are contrary to facts and contentions are totally denied. It is a fact that enquiry was held on 9-2-98 and the workman had accepted the charges unconditionally. From the proceedings of the enquiry dated 9-2-1998, it is clearly recorded in the enquiry proceedings dated 9-2-1998 and since the charges were admitted unconditionally there was no need to proceed further with the enquiry. Hence, it is stated that there was no violation of principles of natural justice. During the personal hearing, the workman admitted the charges and pleaded mercy before the Disciplinary Authority. He never explained to the Disciplinary Authority any prejudice was caused to him during the personal hearing especially when the charges were admitted by him. The workman also preferred a departmental appeal and the workman had an opportunity to advert to the findings of the report before the Appellate Authority, which he availed and the same was duly considered by the Appellate Authority. During the appeal also the workman did not claim any prejudice in the enquiry proceeding.

Hence, it is prayed that the action of the management of Canara Bank in dismissing the services of the concerned workman, Clerk w.e.f. 28-7-1998 is justified and the workman is not entitled to any relief.

4. The workman submitted rejoinder stating the same facts.

5. The management has produced MW-1 H. R. Mishra, who has proved Ext. M-1 to M-6. The workman has produced himself as WW-1 and proved documents Ext. W-1 to W-17.

6. Learned counsel of the workman argued that the nature of enquiry has been changed by the Enquiry Officer regarding preliminary issue to final enquiry without holding preliminary enquiry. Moreover, venue of holding enquiry has also been changed. In this respect the management's witness, MW-1, in cross-examination stated that it is true in the letter dated 29-1-98 which was sent to the concerned workman the mention has been made regarding preliminary enquiry. On the first date of the domestic enquiry is considered as preliminary enquiry and for that reason in some of the documents the mention is about preliminary enquiry and he stated at page 4 that there was no any separate preliminary enquiry as such and since on the first day itself the concerned workman confessed his guilt. It shows that without Preliminary final enquiry has been made.

Learned counsel of the management argued that when the workman has confessed his guilt there was no need of holding preliminary enquiry. There is no force in the argument of the management because preliminary enquiry is must and after preliminary enquiry the final enquiry would have been done by the management. It shows that natural justice has not been followed.

7. Second argument of the workman is that after enquiry copies of proposal for dismissal, enquiry proceeding report and punishment imposed have not been served on the concerned workman which was against the principle of natural justice. In this respect the management's witness MW-1 at page 4 stated that I had not recommended any punishment to be imposed against the concerned workman in my enquiry report. As he was not concerned, he could not say whether prior to awarding punishment the copy of enquiry report was sent to the concerned workman or not. This statement shows that the concerned workman was dismissed without serving copy of enquiry report, proceedings and proposed punishment to the concerned workman which shows that there is violation of natural justice. Though, in this respect the management argued that WW-1 admitted in cross-examination that management served him finding of enquiry report, but this finding of enquiry report has been given to the concerned workman after proposed punishment, which should have been given to the workman before passing final order. This has not been done by the management so far. In this respect on behalf of the workman (1999) 2 Supreme Court Cases 21

has been referred in which Hon'ble Supreme Court laid down :-

"Holding of ex parte enquiry behind the back of the employee—Test is whether it serves as a motive or foundation of the termination—For this purpose court can go behind the order—If the purpose of the enquiry is not to find out the truth of the allegations of misconduct but to decide whether to retain the employee against whom a cloud is raised on his conduct such enquiry only serves as a motive for the termination—But where the enquiry is held wherein on the basis of the evidence a definite finding is reached at the back of the employee about his misconduct and such finding forms the basis or foundation of the order of termination, such order would be punitive—Where enquiry officer examined the witness, recorded their statements and recorded a finding of misconduct behind the back of the employee and also recommended his termination, order of termination on the basis of such finding and recommendation would be punitive and against principles of natural justice."

8. On behalf of the management, 1988 PLJR 145 has been referred in which Hon'ble Supreme Court laid down that employee can not be prevented from taking further steps under a relevant Labour Act. "Departmental proceedings—employee chargesheeted—reply submitted—reply substantial to establish charge—No further enquiry necessary".

9. The management has also referred a decision of Hon'ble Supreme Court reported in (2001) 6 Supreme Court Cases 392 in which Hon'ble Court laid down for furnishing copy of enquiry report and nature of and effect of non-compliance with such rule is procedural and mandatory, the delinquent seeking the order of his dismissal be quashed on the ground of non-compliance with the said provision, must show that he was prejudiced thereby, otherwise the said omission would not be fatal to the impugned order. The management has also relied on a decision of Hon'ble Supreme Court reported in AIR 1996 SC 1669 in which Hon'ble Supreme Court laid down that principles to be followed in context of disciplinary enquiries and order of punishment imposed by employer upon employee-scope explained. The Hon'ble Supreme Court also laid down that—

"Disciplinary enquiry—Natural justice—Substantial compliance with rule—Copies of statements of two witnesses not supplied to delinquent—However, he was permitted to pursue them and take notes there—from more than three days prior to their examination—No objection raised by delinquent—It cannot be said that he had no fair hearing or enquiry against him was not fair enquiry."

10. Learned counsel of the workman also referred (1993) 4 Supreme Court Cases 727 in which Hon'ble Supreme Court held that when enquiry officer is other than the disciplinary authority, held, delinquent employee is entitled

to a copy of enquiry report of the enquiry officer before the disciplinary authority takes decision on the question of guilt of the delinquent—delinquent has a right to reasonable opportunity to represent against findings of Enquiry Officer. This pertains to the first stage of the inquiry when disciplinary authority takes decision on the basis of the enquiry report along with delinquent employee's reply to it and other evidence which constitute an integral part of the inquiry. As per law laid down by the Hon'ble Supreme Court, on the part of the management not to supply enquiry report to the concerned workman shows that natural justice has not been followed because as per law laid down by Hon'ble Court delinquent has right to represent against the finding of the Enquiry Officer. In this case the Hon'ble Supreme Court also referred (1991) 1 SCC 588, 1991 SCC (L&S) 612, (1991) 16 ATC 505, (1988) 3 SCC 600, 1988 SCC (L&S) 869, (1992) 1 SCC 709 (1992) 3 SC 605.

11. Learned counsel of the management argued that as the concerned workman admitted his guilt so on the basis of admission he was dismissed from service, but as per allegation of the workman's representative it shows that he signed admission with presumption that he was going to be exonerated which seems not to be very correct because the workman is literate person.

Regarding Serving of copy of enquiry proceeding and proposed punishment letter has been received written by the concerned by Ext. W-8 dated 18-8-98, regarding demand of copy of enquiry proceeding report which has been served on him on 1-9-98 as per Ext. W-9. Though he has been dismissed from Service on 28-7-98 as per Ext. W-7 which shows that as per document filed by the management he was not served copy of the enquiry report and proposed punishment. In this respect learned representative of the management argued that he was given personal hearing as per Ext. W-6. Ext. M-6 shows that personal hearing of the concerned workman was held on 27-7-98 and final order was passed on 28-7-98, it only shows that the concerned workman was not given sufficient time before final order was passed against him as per document filed on behalf of the management. There is no document regarding preliminary enquiry after which final hearing has been held by the management because after preliminary enquiry chargesheet should have been issued. The concerned workman had been issued chargesheet on 23-8-97. Before this Tribunal no document has been filed by the management which shows any preliminary enquiry has been held and on which basis final enquiry was held and issued to the concerned workman and as per evidence produced by the management's witness, MW-1, who has stated clearly that letter dated 29-1-98 was sent to the concerned workman which mentions regarding preliminary enquiry. It shows that before preliminary enquiry, chargesheet was issued on 23-8-97 and he also stated that there was no preliminary enquiry as such. Again stated that preliminary enquiry was held on 9-2-98.

In this respect learned counsel of the management argued that in the case of fraud and forgery by Bank's employee it is not necessary that preliminary enquiry be held and after preliminary enquiry final enquiry shall be held. Moreover, he also argued that the concerned workman has in his letter dated 9-2-98, Annexure-2, admitted that he has committed forgery and withdrew money from the Bank by making signature of a customer. Learned counsel of the management also argued that the concerned employee has fully participated in the enquiry and personal hearing. It shows that there is no illegality in the enquiry conducted against the workman. As per Annexure-8 in presence of his representative and the concerned workman and Disciplinary Authority on 27-7-98 the concerned workman has admitted his guilt and also stated that he got medical leave for expenses to meet his ailing mother and wife. It only shows that he has committed fraud and withdrew money by making forged signature of the client of the Bank. If his mother or wife was ill he could take and borrow money from his co-workman or from friend or relative and not to commit forgery by withdrawing the money from the Bank making false signature of the client. This is no ground that he had deposited Rs. 30,000/- in the Bank after fraud was detected.

12. In view of the above facts and circumstances I come to the conclusion that the action of the management of Canara Bank in dismissing the services of Shri Satyendra Kumar Sinha, Clerk, w.e.f 28-7-1998 is justified and the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 3 फरवरी, 2009

का.आ.519.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 32/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-02-2009 को प्राप्त हुआ था।

[सं. एल-12011/36/2004-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 3rd February, 2009

S.O.519.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No.32/2004 of the Central Government Industrial Tribunal-cum- Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 3-2-2009.

[No. L-12011/36/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 32 of 2004

Parties : Employers in relation to the management of
Central Bank of India

AND

Their workman.

Present : Mr. Justice C. P. Mishra, Presiding Officer.

APPEARANCES

On behalf of the : Mr. G. C. Chakraborty, Advocate.
Management

On behalf of the : Mr. D. K. Chatterjee, General
Workman Secretary of the Union.

State: West Bengal. Industry: Banking

Dated the 21st January, 2009.

AWARD

By Order No. L-12011/36/2004-IR (B-II) dated 19-7-2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following Dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India by not regularizing Shri Utpal Paul and Shri Tarak Nath Ghosh for the post of Peon/Sub-ordinate Staff is justified and also whether the action of the management of Central Bank of India in not observing the Section 25F of ID Act is justified? If not, what relief the concerned workmen is entitled to?"

2. This reference has been made at the instance of the Central Bank of India Employees' Union, hereinafter to be referred as the union. The case of the workman as it appears from the statement of claim of the union in brief is that S/Shri Utpal Paul and Tarak Nath Ghosh, alias Babin Ghosh the two concerned workmen in this case had worked as casual sub-staff by the order of the South Regional Office management of the Central Bank of India, hereinafter to be referred as the Bank to facilitate customers' service and smooth functioning of the Regional Office (South) of the Bank. They were paid @ Rs.16 per day by debiting P/L Misc. Charges A/c. through vouchers prepared in their name. The management of the Zonal Office of the Bank had also accepted the same and recommended the case of the concerned workmen for absorption. In this connection the union has referred to the different letters of various authorities of the management and claimed that it will appear from those letters that both the concerned workmen had worked for more than 240 days in the years 1988 and 1989 as casual workers for supplying drinking water to the

staff and customers of the Bank. It is stated that there is no designation and/or post of Water boy in successive bipartite settlements. It is claimed that the concerned workmen are entitled to get permanent recruitment in the Bank as subordinate staff as per their qualifications. It is alleged that the management had violated its own circulars by not paying remuneration to the concerned workmen for Sundays and holidays falling in between their days of work. It is also alleged that the Bank has indulged in unfair labour practice by not complying with the provisions of the bipartite settlement, Sastri Award and the Industrial Disputes Act, 1947. It is pointed out that as per Section 2(ra) of the Industrial Disputes Act, 1947 read with item I-of Schedule V of the Act casuals or temporaries and to continue them as such for a long time with an object to deny the employee the benefits under industrial law or to deprive them the status and privileges of permanent worker amounts to unfair labour practice. The union has also quoted some portion of an Award dated 12th March, 1999 passed by the then Presiding Officer of this Tribunal in Reference No.3 of 1995 wherein the management of the Bank was directed to reinstate one Dilip Kumar Ghosh in service as a casual worker from the date of termination and to pay him all his back wages.

3. The management of the Bank has filed a written statement denying the disputing the claims and contentions made on behalf of the workmen. It is stated therein that the present dispute cannot come under the purview of an industrial dispute as there is no employer - employee relationship between the Bank and the persons involved in this reference. The reference is stated to be not maintainable because it does not mention the date of claim for absorption of the workmen concerned. Regarding the facts it is the case of the management that the concerned workmen were engaged by the Staff Canteen for preparation of and supply of food. The employees working in the Staff Canteen used to be employed by the Canteen Committee which has its different entity and the status of the employees working in the Staff Canteen is different from the staff engaged at any Branch of the Bank. Their services, however, were used for supplying drinking water to the staff of the Bank at its Regional Office, Calcutta (South) for half an hour or one a day well before starting of the works in the Staff Canteen and they were suitably compensated for the same. Their engagements were purely, on job basis and such it cannot be termed as 'casual'. They were not engaged by the Bank to perform any job of a Peon on full time basis. They were paid @ Rs.16 per day through P/L vouchers and petty cash vouchers. It is stated that as per procedure laid down by various circulars/orders, agreements the Bank had to recruit a sub-staff through local Employment Exchange against any vacancy either temporary or permanent and that too after following certain guidelines, but the concerned workmen were not appointed through any Employment Exchange after following prescribed procedure. They were engaged by the office of

the Regional Manager (South), Calcutta as and when necessary and not on regular basis. According to the management the circulars/orders as referred to on behalf of the workman is not connected to the issue in dispute and Section 25F of the Act has no application in the case of the concerned workmen. It is also stated that the concerned workman do not come within the purview of 'workman' as defined in Section 2(s) of the Act and, therefore, the nature of job as performed by them cannot be adjudicated by this Tribunal to give relief of regularization to their respective posts which are not in existence in the banking industry. Therefore, the workmen are stated to be not entitled to any relief in this case.

4. A rejoinder is also filed on behalf of the workmen reiterating their claims and contentions as already in the statement of claims.

5. Both the parties have examined two witnesses each in support of their respective cases. On behalf of the workmen both the concerned workmen have been examined. WW-1, Utpal Paul has stated in his evidence that he was working as Peon in the South Regional Office of the Bank at Camac Street. As a Peon he was serving drinking water to the members of the staff, customers and at the Regional Manager's chamber. He was also making-over letters at the chamber of the Regional Manager. He has stated that he had worked from 28-12-1987 to 24-12-1988 for 292 days and from January, 1989 to December, 1989 for 272 days. He used to be paid through vouchers initially @ Rs. 8 and subsequently @ Rs. 16 per day. He, however, did not get any payment for Sundays and holidays although there was a circular for making such payments. He also stated that there is a circular issued by the Central Office of the Bank for absorption of the workmen who have worked for 240 days continuously in a period of 12 months. He has further stated that he had read upto Class-X and posses Employment Exchange Card. According to him one Dilip Kumar Ghosh who had completed 240 days in a calendar year was appointed in the Bank. He has prayed for his absorption as a confirmed worker in the Bank. In cross-examination the witness has stated that he was working as a member of the sub-staff on daily wage basis and not as a full-time worker in the canteen of the South Regional Office of the Bank. He has stated that there was no written order for his appointment. He cannot say how the regular workers were getting their wages. He has also stated that no deductions used to be made by the employer from his wages. His further evidence is that his duty hours were from 10.A.M. to 5 P. M. without any break. He did not sign the attendance register, but the Head Peon used to keep note of his attendance. He did not enjoy the benefits of casual leave, earned leave etc., like what the permanent sub-staff of the Bank used to get. Regarding the other members of sub-staff it is stated by him that they used record their attendance in the muster roll and the officers used to enter their attendance.

WW-2, Tarak Ghosh is the other concerned workman in this case. He has stated in his evidence that he worked in the Bank at 7, Camac Street from 28-12-1987 to 24-12-1988 for 298 days and from 2-1-1989 to 30-12-1989 for 272 days. He used to work in Bank from 9 A.M. to 5 P.M. In the morning he used to serve water amongst the staff members, officers and customers and keep the letters and files on the tables of the officers and also take the files to the chamber of the Regional Manager. He was also sent to the different branches by the officer of the Bank. He used to get @ Rs. 16 per day for such work and also train/bus-fares through vouchers, but he did not get any payment of working on holidays and Sundays. According to him his name was recommended and forwarded to the Head Office of the Bank for absorption. He has also stated about the circular of the Bank regarding absorption of the casual workers who had completed 240 days work in a calendar year. He has prayed for his permanent employment in the Bank. In cross-examination the witness has stated that he used to work in the morning, i. e., 9 A.M. to 2 P.M. and Utpal Paul the other concerned workman in the afternoon, i.e., 2 P.M. to 8 P.M. Even after 5 P.M. the witness used to serve letters. On the next day he has stated that he used to work from 9 A.M. to 5 P.M. It is his evidence that besides these two concerned workmen, there were two other daily-rated workers. The concerned workmen used to work at the direction of the Head Zamadar whereas the permanent Peons used to work inside the Bank under the supervision of the officers of the Bank. Permanent Peons used to sign in the attendance register whereas the concerned workmen were not required to do so. He did not receive any letter of appointment from the Bank. He does not know how the other regular Peons were getting their salaries. He however, used to collect money after signing on the voucher. It is evidence that he was not sponsored by the Employment Exchange and he was working in the Bank at the instance of one officer of the Bank. He has stated that he has read upto Class-III and the other Peons may have qualification upto Class-IX or Class-X.

6. On the other hand, out of two witnesses of the management MW-1, Satyavan Chattopadhyay was the Sub-Accountant of the Camac Street Branch of the Bank from October, 1985 to July, 1997. He has stated in his evidence that the concerned workmen started working in the canteen as canteen boys by the canteen committee and they cannot be treated as staff members and they cannot claim to work as Bank employees. Salaries and other privileges of the Bank employees are regulated by the bipartite settlements and officers' service regulations. The concerned workmen were working in the canteen and were serving tea, food and water amongst the staff working in the Regional Office of the Bank at Camac Street and the canteen committee used to maintain their attendance and they were not working in the Bank. He, however, does not

know whether the Bank used to employ them or not. It is his clear evidence that the concerned workmen were not in any way connected with the Bank's work during his tenure of service at Camac Street Regional Office and glasses of water used to be served before the commencement of office hours. In cross-examination the witness has stated that he knew the concerned workmen. In the years 1998 and 1999 he was not posted at the Regional Office of the Bank and thus does not know that the concerned workmen were allowed by the Regional Office management of Camac Street to work as subordinate staff-cum-waterboy, but during his tenure there, the management had not taken their services. It is not within his knowledge that the name of the concerned workmen were recommended for absorption by the Regional Manager, South Regional Office of the Bank, but agreed that from time to time circulars are issued by the management as guidelines regarding absorption of employees who worked for 240 days in a calendar year.

MW-2, Sangit Sarkar an Assistant Manager of the Bank posted at Sillguri is the other witnesses for the management in the years 1988-89 was posted at the Regional Office (South), Calcutta in the same capacity. He knew the concerned and stated them to be canteen-boys who used to supply only tiffin. He has stated in his evidence that the canteen-boys are not guided by the circulars of the Bank regarding staff and their salary is not same similar to those of regular staff of the Bank. Canteen Committee of the particular office or branch has the authority to appoint canteen-boys, but he is not aware whether for their appointment canteen committee had to take approval from the Bank. Their service conditions are regulated by the respective canteen committees. He has stated for recruitment of regular subordinate staff of the Bank there is procedure regulated by the circulars of the Bank. For doing some urgent work they engage some extra persons, but these concerned workmen were never treated as casual or temporary staff of the Bank. In cross-examination the witness has stated that he cannot recall in which particular department in the Regional Office South he was posted in 1989 and also that he was then the Manager PRS there. He is also not sure whether the management had taken the service from the concerned workmen as casual sub-staff during 1988-89 and whether they were allowed to supply drinking water to the staff members, officers and customers. He has further stated that the concerned workmen supplied drinking water, but he has no knowledge as to the amount paid to them for their work. The witness has no knowledge if there is a circular of the Central Office of the Bank that the persons who have completed 240 days work in a calendar year in 1988-89 will be absorbed as a permanent sub-staff straight-way.

7. Several documents have been exhibited in this case on behalf of both the parties. Out of the documents

exhibited on behalf of the workmen Exts. W-1 and W-2 are two letters dated 20-7-1999 and 14-9-2000 written by the regional Manager to the Zonal Office regarding absorption of the concerned workmen. Ext. W-3 is a representation of the union dated 4/5-1-2002 addressed to the ALC(C), Kolkata on issue in question. Ext. W-4 is the reply dated 1-6-2002 of the Regional Manager on the said subject to the ALC(C), Kolkata, Exts. W-5 and W-5/1 are the information one Bablu Ghosh and Utpal Paul under the signature of Manager (PRS) of the Bank. Ext. W-6 is a letter dated 6-7-1999 of the Sr. Manager-PRS to the Regional Office, Calcutta South of the Bank regarding absorption of casual workers, S/Shri Utpal Paul and Bablu Ghosh. Ext. W-7 is a letter dated 2-8-1999 written by the Chief Manager (PRS) to the Regional Office, Calcutta (South) on the same subject. Ext. W-8 is a letter dated 1-1-2002 of the Chief Manager (PRS) to the Central Office of the Bank providing information on temporary workmen. Ext. W-9 is the failure of conciliation report dated 16-2-2004. Ext. W-10 is the letter No. 7/2/2001-ALC-II dated nil of the ALC(C), Kolkata to the Chairman and Managing Director of the Bank over the Industrial dispute between the parties. Ext. W-11 is the approach paper on the issue of temporary employees. Ext. W-12 is a letter of the Assistant General Manager dated 10-8-2000 to the Regional Office, Calcutta (South) seeking information regarding subordinate staff engaged on casual/temporary basis. Ext. W-13 is an office circular dated 4-10-1990 issued by the General Manager of the Bank regarding payment of wages to temporary employees including Sundays falling in between their days of work. Ext. W-14 is the Central Office Circular of the Bank dated 12-3-1991 regarding absorption of temporary employees. Ext. W-15 is an Award dated 12-3-1999 passed by this Tribunal in Reference No.3 of 1995. Ext. W-16 is another representation of the union dated 10-6-2002 to the ALC(C), Kolkata regarding regularization of the concerned workmen in the service of the Bank. Ext. W-17 is a letter of the Regional Manager Calcutta (South) dated 28-10-2002 regarding regularization of four workmen including the concerned workmen. Ext. W-18 is a letter of the Chief Manager (PRS) dated 22-8-2001 addressed to the different Regional Offices seeking information regarding temporary workers. Ext. W-19 is the minutes of the conciliation proceedings held on 27-07-2002. Ext. W-20 is a circular dated 31-8-2000 issued by the Regional Manager, Calcutta South to all the branches under its control seeking information on subordinate staff engaged on casual/temporary basis. Ext. W-21 is a circular of the Bank dated 13-10-1981 regarding absorption of casual/daily wage employees who have worked for 240 days or above in 12 calendar months. Ext. W-22 is Chapter - 6 (Rules regarding recruitment). Ext. W-23 is pages 190 and 191 of the service conditions of the Bank employees and Ext. W-24 is the statements of working days in respect of the concerned workmen.

8. It appears from the documents exhibited on behalf of the management that Exts. M-1, M2, M-6 and M-8 are the same documents which have already been exhibited on behalf of the workmen as Exts. W-12, W-20, W-4 and W-14 respectively. Ext. M-3 is a letter of the Central Bank of India Staff Congress (W.B.) to the ALC(C), Kolkata over the dispute regarding regularization of the concerned workmen. Ext. M-4 is a letter dated 11-02-2000 written by the Assistant Regional Manager, Regional Office, South Calcutta to the ALC(C), Kolkata in the same subject. Ext. M-5 is a letter dated 24-01-2000 written by the Regional Manager, South Calcutta Regional Office of the Bank to the ALC, Kolkata in reply to the representation made on behalf of the workmen on the same subject. Ext. M-7 is a circular dated 20-05-2002 issued by the Central Office of the Bank regarding the onus of the casual workers to prove continuous service of 240 days in a year as per Judgment of the Hon'ble Supreme Court.

9. On the perusal of the aforesaid facts and evidence led on the either side it is evident that the claim of these two concerned workmen is for regularizing their services for the post of Peon/Subordinate Staff in the Bank. According to them they have already worked for more than 240 days in the years 1988 and 1989 as casual workers for supplying drinking water to the staff and customers of the Bank. It is also stated that they are entitled to get permanent recruitment in the Bank as they fulfilled the required qualifications prescribed by the Bank in this connection. Management, however, has challenged it by saying that these two employees, in fact, had been working in the staff canteen employed by the canteen committee which has its different identity and status and they were paid through petty cash vouchers in this regard. It is stated that for recruitment of sub-staff the procedure is laid down in various circulars/orders/agreements in the Bank and such recruitment takes place through local Employment Exchange against any vacancy either temporary or permanent and that too after following certain guidelines whereas these workmen had not been so appointed after following the prescribed procedure in this regard so that there is any Question of regularization of their services may arise and also that the provisions of Section 25F of the Act has got no application to the present set of facts as stated by these workmen and they are not entitled to get any relief in their favour.

10. The workmen, however, in support of their claim and contentions have relied upon the various documents and circulars of the Bank to show that they are so entitled, to be so absorbed in the Bank as Peon/Subordinate Staff on the basis of their period of work as shown in the sheet filed on the record vide Ext. W-24. Apart from that by his oral evidence too WW-I, Utpal Paul, alias Paul stated that he had so worked in the Bank from 28th December, 1987 to 24th December, 1988, i.e., for a period of 290 day and even

further to that from January, 1989 to December, 1989, i.e., for 272 days and for this he was paid his wages accordingly. It is also stated that the Regional Manager of the Bank himself through his letter dated 20th July, 1999 had recommended his case for his absorption in the Bank as a casual worker vide Exts. W-1 and W-2 in this connection. The circular issued by the Central Office of the Bank for absorption of such workmen who had so worked for 240 days continuously in a period of 12 months was also there. It is also submitted that like him one other employee, Dillip Kumar Ghosh was appointed by the Bank as a Peon as he too had completed 240 days in a calendar year and after that he is so posted at Hari Mohan Ghosh Road Branch of the Bank accordingly. The other workmen, WW-2 Tarak Ghosh similarly stated that he had also so worked from 28th December, 1987 to 24th December, 1988 and then from 2nd January, 1989 to 30th December, 1989, i.e., for 298 days and as such worked for more than 240 days during the said period as per Bank's circular in this respect Ext. W-14 to be so entitled to get the relief for absorption in the Bank accordingly. It is evident that there is no denial of the period of work so done by these two workmen by the management except saying that they had done the said work as being so appointed by the canteen committee and as such they are not the employees of the Bank. The statement as given by the two witnesses examined on behalf of the management MW-1, Satyavan Chattopadhyay and MW-2, Sangit Sarkar on the contrary, however, pleaded their ignorance about the contents of the circular, Ext. W-8 so sent about the recommendation so made for absorption of these two workmen in the Banks so claimed by them in this connection.

11. Considering all these more or less admitted facts and also the evidence led on behalf of either side, it is evident that the workmen have based their claim on the circular dated 12th March, 1991, Ext. W-14 which provides the conditions for absorption of the temporary employees working in the Bank during the relevant period. This circular goes to show that temporary employees who had so put in 240 days of temporary service in any continuous period of 12 months after 01-01-1982 upto 31st December, 1990 were to be considered for their absorption in the immediate available vacancy in the Bank without any test and interview. It also provide that qualification and age norms etc. will not be insisted in their case and they will be so considered for their appointment first before initiating any recruitment process for making any such further appointment in the Bank for any such vacancy so available to be there in the Bank. It is also evident that paragraphs 4 and 5 of this circular relate to the case of those employees who had so worked for the period 1987 to 24th December 1990 which cover the period of these two workmen since they had so worked in the Bank as sub-staff and as such deserve to be so absorbed in the Bank accordingly. In this connection the document, Ext. W-8 as filed on their behalf

also is so referred to show that the information was given to the Central Office by the Regional Office about such temporary workers who had so worked on 31st July, 2001 as this information was so sought vide circulars so received from the Central Office for absorption to be made of such employees. The names of both the workmen were so mentioned showing that they had so worked as sub-staff in the Bank for the period of 1988 - 1989 and as such their case may fit for their absorption.

12. It is also argued on behalf of the workmen that on similar facts and allegations one other person, Shri Dilip Kumar Ghosh who like them had so done his work in the Bank for 240 days or so during the period 1988 - 1992 had also filed his claim before this Tribunal vide Reference No.3 of 1995 which was decided in his favour on the basis of the aforesaid circular of the Bank vide Ext. W-5 which was so filed in that case as well in this regard. The termination of services of the concerned workman was held to be illegal and void for non-compliance of provisions of Section 25F of the Act and as such deemed to be in continued service as before. The Tribunal further held the management to reinstate him in service as casual worker and also pay him all his back wages found to be so due to him in this regard.

13. In view of the aforesaid facts it is evident that the workmen in this case too similarly have proved their case through their oral evidence as well as through the documents filed by them in this regard to get a benefit available to them under the aforesaid circular, Ext. W-14. It is however found that the services of the concerned workmen have already been terminated and so there is no question of their absorption arises at present by the management, but it should however consider it after they so join the Bank as casual workmen as they had been so working earlier in this connection.

14. Looking at the aforesaid facts it is found that services of the workmen were terminated without any compliance of provisions of Section 25 F of the Act and as such it is found to be illegal and void accordingly and both the workmen be deemed to have been continuing in service as before. The management of the Bank is directed as such to reinstate them in service as casual worker from the date of termination of their services and pay half of the back wages which may be found to be due to them accordingly. So far as their claim for regularization as claimed through this reference, the management may consider the same in light of the circular so issued vide Ext. W-14 after they so join the Bank as casual workmen in this regard.

The reference is answered accordingly.

C. P. MISHRA, Presiding Officer

Dated, Kolkata,
the 21st January, 2009

नई दिल्ली, 3 फरवरी, 2009

का.आ. 520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट (संदर्भ संख्या 103/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-02-2009 को प्राप्त हुआ था।

[सं. एल-12012/160/2000-आई आर (बी-II)]

राजेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 3rd February, 2009

S.O. 520.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.103/2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi now as shown in the Annexure, in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 3-2-2009.

[No. L-12012/160/2000-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT NO. II, NEW DELHI

I.D. NO. 103/2000

DATE: 25-11-08

In the matter of dispute between :

The General Secretary,
All India Allahabad Bank Employees Union,
Allahabad Bank,
Baroda House,
New Delhi-110001.

...Workman

Versus

The Regional Manager,
Allahabad Bank,
Regional Office,
13/34-Arya Samaj Road,
Karol Bagh, New Delhi-110005.

...Management

AWARD

The Central Government Ministry of Labour vide Order No. L-12012/160/2000-IR (B-II) dated 15-9-2000 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Senior Manager Allahabad Bank Tilak Nagar Branch, New Delhi and the Regional Manager, Allahabad Bank, Arya Samaj Road, Karol Bagh, New Delhi. In not permitting Shri A. S. Arora CCC Tilak Nagar, Branch to officiate in the allowance carrying post during the period from 9-12-97 to September, 1998 and accordingly not paying him the said officiating allowance is reasonable, justified and valid ? If not, what relief and benefit Shri A.S. Arora CCC Tilak Nagar Branch is entitled for ?"

On 14-10-08 A/R of the workman Shri R.S. Saini appeared. A/R of the management was present and it was submitted that there was likelihood of settlement in this case. Accordingly the matter was adjourned to 31-10-2008 for exploring about the settlement. On 31-10-2008 none from the side of the workman had appeared and the management had moved an application stating therein that the workman has submitted a letter dated 21-2-2007 stating therein that claim of the workman has been settled and he has no grievance now left against the bank and the workman withdraws his complaint and requested to treat the case as settled and closed. The letter written by the workman was also enclosed alongwith the application filed by the Senior Manager of the Management Bank. Today none has appeared from the side of the workman. It is thus evident that the workman has settled his claim with the management bank out of court and he has no grievance left against the Bank. Hence No Dispute Award is passed in this case. File be consigned to record room.

SATNAM SINGH, Presiding Officer

Dated: 25-11-08

नई दिल्ली, 4 फरवरी, 2009

का.आ. 521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान एरोनॉटिक्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-42012/165/2005-आई आर (सी एम-II)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 521.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.9/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of M/s. Hindustan Aeronautics Limited and their workmen, received by the Central Government on 4-2-2009.

[No. L-42012/165/2005-IR (CM-II)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT BHUBANESWAR

Present : Shri N.K.R. Mohapatra, Presiding Officer,

INDUSTRIAL DISPUTE CASE NO. 9/2006

Date of Passing Award - 18th December 2008

Between:

The Management of the General Manager,
M/s. Hindustan Aeronautics Limited,
Engine Division, P.O. Sunabeda,
Dist. Koraput, Orissa - 763 002

... 1st Party-Management.

(And)

Their Workman Shri Sudhir Kumar Nayak,
C/o. R.K. Swain, J.K.P.M. Colony,
Qrs. No. E-11/9, At/Po. J.K. Pur,
Dist. Rayagada, Orissa. ...2nd Party-Workman

APPEARANCES.

M/s. G. Pujari, ... For the 1st Party-
Advocate. Management
M/s. N.N. Mohapatra ... For the 2nd Party-
& Associate, Advocates. Workman

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes for adjudication vide their Order No. L-42012/165/2005 (IR(CM-II), dated 17-05-2006.

"Whether the action of the Management of Hindustan Aeronautics Limited, Engine Division, Sunabeda inflicting punishment of dismissal from services upon Shri Sudhir Kumar Nayak is legal and justified? If not, to what relief the workman is entitled to?"

Findings on preliminary Issue No.1 relating to propriety of the domestic enquiry

2. The Management of Hindustan Aeronautics Limited, Sunabeda is a Central Government Undertaking. On exercising necessary option some of its employees used to get their salary through bank while others used to get it in cash from the shop meant for disbursement of salary. The disputant-workman used to get his salary through bank. While the Senior Manager (Finance) was disbursing the salary in the shop on 30-9-1998 one Satyabrata Bhakat, P.B. No. 6820 complained that his pay packet had been taken away by somebody on false personification. The Senior Manager (Finance) as a result reported the matter to the Vigilance Department of the Management-Company whereupon a preliminary enquiry was conducted and those who were in the queue to receive their pay packets were interrogated by the Asst. Vigilance Officer and after the disputant was identified to be the man who had received the pay packets of Shri Bhakat, the concerned Asst. Vigilance Officer interrogated the workman and on his admitting the fault asked him to give his explanation in writing. He was then placed under suspension and it was followed by a charge-sheet dated 13/15-10-1998 vide Ext.-Z in the following manner.

This is further to our letter No. KD/AP/D/19/98/5277, dated 8-10-1998 vide which you have been placed under suspension with effect from 8-10-1998, it has been reported against you that:

(1) On 30-9-1998 while payment was being made to employees by S/Shri I.V.S. Prasad Rao, P.B. No. 1362 and K. Mohan Rao, P.B. No. 2951, Sr. Accounts of Accounts Department who were detailed for disbursement of salaries at Repair and Reconditioning shop of Plant Maintenance Deptt. (RR shop), situating in Block-I of the factory, you approached the disbursement party at around 9.00 AM claiming to be Shri Satyabrata Bhakat, P.B. No. 6830, Mechanic, an employee of your I.O. Department. Subsequently, you have also received and acknowledged the pay packet amounting to Rs. 3,330 of Shri Satyabrata Bhakat, (salary for the month of Sept. 1998) by signing on the acquittance report as "Satyabrata Bhakat", although you had no authority to collect the pay of Shri Satyabrata Bhakat. Your pay was being disbursed through bank and deposited in your Account No. H-17/1607 of the State Bank of India, Sunabeda.

(2) Shri Satyabrata Bhakat later approached the salary disbursement team for the payment of his salary upon the above fact had come to light. During the course of investigation regarding the missing of pay packet, you were interrogated by the officials of the company on 5-10-1998 and 6-10-1998 wherein you admitted that you impersonated Shri Bhakat and received his pay packet and also requested to be excused claiming it to be your first such mistake. You have also given a written statement admitting the offence committed by you in presence of S/Shri V.K. Sahu, Asst. Vigilance Officer, P.C. Das, Dy. Manager (Accounts) and S.P. Patnaik, Asst. Accounts Officer.

2. The aforesaid acts alleged to have been committed by you, if proved, would amount to grave and serious misconduct in terms of Clause No. 25 (b) (xix), 25(b) (ii), 25(b) (iv), 25(b) (vi), 25(b) (xvi), 25(b) (xxi) and 25(b) (xxii) of the certified Standing Orders of the company which reads as follows:—

25(a)(xix) - Collection of any money other than those authorized by the company during working hours inside the factory premises.

25(b) (ii) - Fraud, breach of trust, dishonesty in connection with the employer's business or property.

25(b) (iv) - Indolging in any corrupt practice.

25(b) (vi) - Breach of Standing Orders or rules or any law applicable to the establishment.

25(b) (xvi) - Forging the signature of other person.

25(b) (xxi) - Deceiving the company by impersonation.

25(b) (xxii) - Falsification of record.

3. You are, therefore, called up to submit your explanation in writing to the aforesaid alleged misconduct within 7 days from the date of receipt of this charge-sheet to the undersigned through "V", failing which it will be presumed that you have no explanation to offer, that you admit the charges and

further action as deemed fit and proper will be taken against you as per the applicable rules.

3. Besides initiating a departmental enquiry, the Management reported the matter to police too. Upon this the workman in his reply marked Ext.-Z/1 asked the Management to keep the departmental proceeding in abeyance till the disposal of the criminal case started against him. Not being satisfied with such explanation the Management appointed an Enquiry Officer and a Presenting Officer. Thereafter the workman filed two Writs vide O.J.C. No. 3746/99 and 1288/99 before the Hon'ble High Court. In a subsequent order the Management changed the enquiry officer and presenting officer earlier engaged and it was as per the direction of the Hon'ble Court. During enquiry the enquiring Officer denied engagement of an Advocate but permitted the workman to take the assistance of a co-worker. The workman accordingly participated in the enquiry but without the aid of any co-worker. However at the time of examination of 5th witness of the Management he suggested the name of his co-worker. At this he was asked to get the consent of his proposed co-worker to assist him in the proceeding, and on his failure to get such consent the enquiring officer proceeded with the enquiry and on completion of the same submitted necessary report. On such report the delinquent was asked to show cause for the second time and ultimately he was dismissed from service.

4. Challenging the above action of the Management, under this preliminary issue relating to propriety of the Domestic Enquiry, it is alleged by the workman that the Management was not justified in not allowing him to engage an Advocate to defend him in the proceeding and that, his several questions put to the Management Witness were dis-allowed by the Enquiring Officer and that, he was not provided with the copies of the necessary documents on the basis of which he was charge-sheeted and that, he was not paid substantial allowance during enquiry and that, his several letters sent to the Management during course of hearing pointing several defects on the part of the Enquiring Officer was not considered by the Management and that ultimately he was dismissed from service vindictively. Alleging the above it is further contended by the workman that the proceeding held against him was not just and proper and it was violative of the principles of natural justice.

5. During trial the Management produced the entire enquiry file and certain other documents marked as Ext.-1 to Ext.-3, 3/1, 3/2, 3/3, 4 to 4/17. The Management also examined the Enquiring Officer to prove how best the enquiry was conducted. The workman on the other hand examined himself besides producing several documents marked as Ext.-A, A/1 and B to P and P/1 to P/6, Q, R and R/1, R/2, S, S/1 to S/4, T, U, U/1, U/2, V, W, Z, Z/1, Z/2, AA, BB, BB/1 and BB/2. These documents mostly relates to

to enquiry and during enquiry. These documents also include some of the replies of the Management.

6. To sum up, the workman challenged the propriety of the domestic enquiry mostly on the following grounds.

Grounds

1. That he was not allowed to engage an outsider or an Advocate to assist him in the Domestic Enquiry.
2. That during the period of suspension he was not paid his substantial allowance.
3. During course of the enquiry he was prevented from putting several questions to the Management Witness and that some of the answers given by the Management Witness were not properly recorded and that even though he brought such facts to the notice of the Management by sending letters by post soon after the examination of each witness, the Management did not pay any heed to the same.
4. That the domestic enquiry should not have been conducted during pendency of a criminal case.
5. That he was not provided with documents along with the charge-sheet so as to enable him to give his reply.
6. That when he suggests the name of a co-worker at the time of examination of the Witness No.5 the Management instead of allowing such co-worker to assist him had asked him (workman) to get his consent which he could not get and thereby the Management deprived him to be represented properly.

Ground No. 1

7. It is the settled principle that a domestic enquiry is a managerial function and that it is best left to the Management to conduct the same without the intervention of a person belonging to legal profession. While counteracting the same, the workman relied on a case reported in LLJ Vol-I 1983 Page-1 (Board of Trustees of the Port of Bombay -Versus- Dilip Kr.Ragevendranath Nandakrishna and others and draw the attention of the court to para-10 where it has been held that if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent/employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiring officer, whether looking to the nature of the charges, the type of evidence and complex or simple issues that may arise in course of the enquiry the delinquent-employee, in order to afford reasonable opportunities to defend himself should be permitted to appear through a legal practitioner. But as I find the facts and subject matter of that case are totally different from the case in hand. On a reading of the relevant portion of the Standing Order of the Management-Company, it is gathered that under Item-272(a) it has been specified that in the enquiry the workman concerned shall be allowed reasonable opportunities of

explaining and defending his action with the assistance of a fellow-workman who shall have the right to examine and cross examine the witness and to inspect the records and documents produced at the enquiry. Since by making such a provision engagement of Advocate or an outsider has been restricted, the Management can not be accused of not allowing the workman to take the assistance of an Advocate or an outsider. Accordingly the first ground of objection as raised by the workman fails.

Ground No. 2

8. Admittedly the workman was placed under suspension pending domestic enquiry. It is alleged by the workman that during pendency of the enquiry he was not paid any substantial allowance but from one of his letters dated 28-4-1999, which forms part of the enquiry file, it is clear that he was getting the subsistence allowance and for enhance of the same he had written that letter. This itself suggests that the above ground of attack of the workman is nothing but speculative.

Ground No. 3

9. The various correspondences produced by the workman show that after examination of each witnesses the workman used to make correspondences with the Management complaining non-recording of proper evidence. This conduct of the workman squarely speaks of his intention to pervert the proceeding. If really he had such grievance he should have given it writing to the enquiring officer forthwith instead of complaining to the Management several days later. On perusal of some of his letters it is gathered that the complaints made in these letters are quite flimsy, unnecessary and irrelevant to the subject. When standard of proof as required in a criminal proceedings has no place in a departmental proceeding and as in such proceeding the conclusions are drawn in a reasonable manner on the preponderance of probability, it is always open to the enquiring officer to reject irrelevant questions for which he can not be blamed. Therefore the time to time letters sent by the workman to his disciplinary authority pointing various defects on the part of the enquiring officers are of no consequence, the same being a common practice with every delinquent. Accordingly the third ground of attack is of no avail.

Ground No. 4

10. Under this item it is claimed by the workman that when the matter was reported to the police, the Management should not have resorted to a Domestic Enquiry and that, the enquiry having been completed without awaiting for the result of the police investigation, the entire proceeding is therefore liable to be vitiated. This stand, as taken by the workman is also found to be of no consequence in as much as the Management is not precluded from initiating any such proceeding pending investigation of a criminal case. Nor the Management is under any obligation to keep in abeyance such proceeding till the conclusion of a criminal

case as the judgement of a criminal court could not always be regarded as binding in a departmental enquiry as held in the cases reported in 1960-I-LLJ-520, AIR 1963 SC-1723 and AIR 1964 SC 787. Therefore, the allegations of the workman that the proceeding is liable to be vitiated on such grounds does not appeal to the conscience.

Ground No. 5 & 6

11. On perusal of the charge-sheet marked Ext.-Z it appears that while issuing such charge-sheet the workman was never asked to take the assistance of a co-worker to defend himself in the proceeding. Rather the documents marked Ext.-N and the evidence adduced by the workman show that the Enquiry Officer issued a letter to the workman on 4-4-2003 intimating his appointment as an Enquiring Officer. In that letter he asked the workman to take the assistance of an authorized co-worker to defend himself in the enquiry and thereafter the first sitting of the enquiry was conducted on 10-4-2003. The evidence of the workman shows that despite receipt of such letter he could not arrange any co-worker and for this he himself had to participate in the enquiry without any assistance up till Management Witness No.4 was examined. It is only when the Management Witness No.5 was to be examined he sent a letter to the Enquiring Officer by Regd. Post vide Ext.-P intimating the name of his co-worker with his address. In reply to the said letter he was asked by the Enquiry Officer in his letter dated 5-5-2003 marked Ext.-Q to obtain the willingness of his co-worker to assist him in the enquiry. Thereafter the workman in his letter dated 7-6-2003 marked Ext.-R intimated that no co-worker was willing to give their willingness as it was never the practice. The evidence of the Management Witness shows that after receipt of above letter marked Ext.-R from the workman, no step was taken by the Enquiring Officer directing the suggested co-worker to extent his help. As normally no co-worker ever dare to give such consent, the enquiring officer being aware of the same seems to have had passed such an order deliberately so as to deprive the workman of his rights. When the standing order prescribes that the delinquent is to be provided with reasonable opportunities to defend himself by taking the assistance of a co-worker, that itself casts a responsibility on the Management to provide a co-worker as suggested by the workman so that the co-worker would be in a comfortable position to come on duty to render necessary assistant. If this is not done no worker would ever prefer to help a delinquent by taking leave. Therefore, the conduct of the enquiring officer in asking the workman to obtain the consent of his co-worker to defend him in the proceeding appears to have been tainted with ill motive. After receipt of such a letter from the workman the enquiring officer should have taken necessary step to allow the proposed workman to come forward officially to assist the workman and for this the Management should have issued a letter asking the proposed co-workman as suggested by the delinquent to extend his necessary help to the workman.

Since the same has not been done by the Management it is held that the workman was not provided with sufficient opportunity to defend himself in the proceeding.

12. Furthermore, as the law demands, the delinquent is always to be provided with necessary documents basing on which charges have been framed so that he will be in a position to give his reply. If such documents cannot be supplied along with a charge-sheet, the delinquent is at best to be kept informed that he can go through the same for the purpose of his reply. The Standing Order item No. 27 2(a) infact contains such a provision allowing the delinquent to inspect the record and the documents to be produced in the enquiry. But if he is intimated of such facts in the charge-sheet it itself would amount to non-compliance of the principles of natural justice. The letter of the workman dated 22-10-1998 (Ext.-M) and the letter of the Management marked Ext.-3/2 show that after receipt of the charge-sheet the delinquent in his above letter had asked for the document on the basis of which he was charge-sheeted. On receipt of such letter the Management drafted a letter on 9-11-1998 for supply of the required documents but in practice gave it to the workman on 8-5-2003 i.e. after the proceeding was closed. This coupled with the findings given in the previous para clearly spells out that the delinquent was not given sufficient opportunity to defend himself and the manner of enquiry was devoid of natural justice, rendering the entire findings of the enquiry officer and the punishment awarded illegal and infructuous. In view of the above, especially considering the charges to be more serious, I, instead of directing reinstatement of the disputant, direct the Management to enquire into the matter afresh after giving full opportunities to the workman to defend himself in the proceeding to be started afresh. The workman should be treated as on suspension as before for the purpose of enquiry.

13. In view of the above findings, the other issues need no further examination.

14. The reference is answered accordingly.

Dictated & Corrected by me.

N.K.R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2nd PARTY WORKMAN.

W.W.-1-Shri Sudhir Kumar Nayak

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2nd PARTY WORKMAN.

Ext.-A-Letter dated 9-5-2003 of Sudhir Kr. Nayak.
Ext.-A/1-Reply of Enquiry Officer to Sudhir Kr. Nayak.
Ext.-B-Letter dated 13-5-2003 of Sudhir Kr. Nayak.
Ext.-C-Letter dated 17-5-2003 of Sudhir Kr. Nayak.
Ext.-D-Reply dated 22-5-2003 of Enquiry Officer.
Ext.-E-Letter dated 22-5-2003 of Enquiry Officer.
Ext.-F-Letter dated 23-5-2003 of Sudhir Kr. Nayak.

Ext.-G-Reply No. 566 dated 24-5-2003 of Enquiry Officer.

Ext.-H-Letter dated 24-5-2003 of Sudhir Kr. Nayak.

Ext.-J-Letter dated 30-5-2003 of Sudhir Kr. Nayak.

Ext.-K-Reply No. 623 dated 3-6-2003 of Enquiry Officer.

Ext.-L-Closed Envelope.

Ext.-M-Copy of letter dated 22-10-1998 of workman.

Ext.-N-Letter No. 383 dated 4-4-2003.

Ext.-P-Letter dated 30-5-2003.

Ext.-P/1-Postal receipts.

Ext.-P/2-Postal A.D.

Ext.-P/3-Postal receipt.

Ext.-P/4-Postal A.D.

Ext.-P/5-Postal receipt.

Ext.-P/6-A.D. Card.

Ext.-Q-Letter dated 5-6-2003.

Ext.-R-Letter dated 7-6-2003.

Ext.-R/1-Postal receipt.

Ext.-R/2-Postal A.D.

Ext.-S-Complaint dated 11-4-2003.

Ext.-S/1-Complaint dated 23-4-2003.

Ext.-S/2-Complaint dated 7-6-2003.

Ext.-S/3-Complaint dated 10-6-2003.

Ext.-S/4-Complaint dated 30-6-2003.

Ext.-T-Written note of argument.

Ext.-U-Interim reply dated 21-10-2003 to the 2nd show cause notice.

Ext.-U/1-Reply of Management dated 28-10-2003.

Ext.-U/2-Letter dated 4-11-2003 of Shri S.K. Nayak.

Ext.-V-Dismissal order dated 22-11-2003.

Ext.-W-Appeal Memo dated 12-1-2003.

Ext.-Z-Charge-Sheet.

Ext.-Z/1-Reply dated 17-11-1998 of S.K. Nayak.

Ext.-Z/2-Letter dated 2-12-1998 of HAL to S.K. Nayak.

Ext.-AA-Representation dated 28-4-1999 of S.K. Nayak.

Ext.-BB-Representation dated 17-5-2003 of S.K. Nayak.

Ext.-BB/1-Representation dated 5-6-2003 of S.K. Nayak.

Ext.-BB/2-Letter dated 7-6-2003 of S.K. Nayak.

LIST OF WITNESSES EXHIBITED ON BEHALF OF THE 1ST PARTY—MANAGEMENT.

M.W.-1-Shri Sanjib Kumar Mohapatra.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1ST PARTY—MANAGEMENT.

Ext.-1-Proceeding file in 127 pages.

Ext.-2-Enquiring Report.

Ext.-3-Letter dated 11-4-2003 of S.K. Nayak.

Ext.-3/1-Letter dated 11-4-2003 of S.K. Nayak.

Ext.-3/2-Letter dated 9-11-98 of HAL, Koraput Division to Shri S.K. Nayak.

Ext.-3/3-Letter dated 7-10-1998 of HAL, Koraput Division.
 Ext.-4-Letter dated 30-9-1998 of HAL.
 Ext.-4/1-Pay bill- Satyabrata Bhakat.
 Ext.-4/2-Pay bill- Sudhir Kr. Nayak.
 Ext.-4/3-Letter dated 6-10-1998 of S.K. Nayak.
 Ext.-4/4-First Shift incentive acquittance for the month of 8/98.
 Ext.-4/5-Letter dated 30-9-1998 of 'Satyabrata Bhakat.
 Ext.-4/6-Payment of salary- Sept. 1998.
 Ext.-4/7-Cash Voucher payment—29-9-98.
 Ext.-4/8-Pay slip check list for the month of 9/98.
 Ext.-4/10-Letter dated 17-4-2003 of SBI Sunabeda Branch.
 Ext.-4/11-Letter dated 30-9-1998 of IVS Prasad Rao, Sr. Accountant.
 Ext.-4/12-Specimen signature of S.K. Nayak.
 Ext.-4/13-Oath of Secrecy.
 Ext.-4/14-Provident Fund declaration of S.K. Nayak.
 Ext.-4/15-LTC declaration of S.K. Nayak.
 Ext.-4/16-HAL-Daily performance report - S.K. Nayak.
 Ext.-4/17-Attendance register for 16-9-98 to 15-10-98-Shri S.K. Nayak.

नई दिल्ली, 5 फरवरी, 2009

का.आ. 522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट मास्टर जनरल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या कम्प्लेंट नं. सी.जी.आई.टी.-2/4 ऑफ 2006 से रेफरेंस नं. सी.जी.आई.टी.-2/95 ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-02-2009 को प्राप्त हुआ था।

[सं. एल-40025/1/2009-आई आर (डीयू)]
 सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 5th February, 2009

S.O. 522.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. Complaint No. CGIT-2/4 of 2006. In Reference No. CGIT-2/95 of 2001) of the Central Government Industrial Tribunal-cum- Labour Court, No. II, Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Post Master General and their workmen, which was received by the Central Government on 5-2-2009.

[No. L-40025/1/2009-IR (DU)]

SURENDRA SINGH, Desk Officer
 ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL NO. II AT MUMBAI

PRESENT: A.A. LAD Presiding Officer

Complaint No. CGIT-2/4 of 2003
 IN

Reference No. CGIT-2/95 of 2001

1. Bhausaheb Rambhau Shikhare,
2. Rajesh S. Kadam,
3. Sitaram L. Ghare,
4. Siddharath M. Sonawane,
5. Suresh R. Chavan,
6. Ravindra A. Bamne

Having address for correspondence
 Office of the Post Master General
 Department of Post, Videsh Dak Bhavan,
 Mumbai-400 001. ... Complainants
 v/s

The Post Master General,
 Department of Post,
 Videsh Dak Bhavan,
 Mumbai-400 001. ... Opposite Party

APPEARANCE

For the Complainant : Mr. Jaiprakash Sawant,
 Advocate,
 For the Opponents : Mr. V. Narayanan,
 Advocate.

Date of Passing the Award : 22-12-2008.

Complaint under Section 33-A of the Industrial Disputes Act, 1947.

AWARD

1) The Complainant above named has filed this Complaint under Section 33-A of the Industrial Disputes Act, 1947 requesting to hold and declare that, the Opposite Party has contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947 and pray to direct Opposite Party to restore his basic pay to Rs.2960 with effect from March, 2003. Said was replied by the Opposite Party by filing written statement at Exhibit 4. Then Complainant filed affidavit at Exhibit 14 in lieu of the examination in chief, where he was cross examined also. He closed his evidence and filed closing purshis at Exhibit 15. Then Opposite Party examined its witness by filing affidavit at Exhibit 16 in lieu of the examination-in-chief. He was also cross-examined by the Complainant. Opposite Party closed its evidence and filed closing purshis at Exhibit 17. Even written arguments were filed at Exhibit 18 by the Opposite Party and that, by the Complainant at Exhibit 19 and the matter was kept for orders.

2) In the meanwhile Complainant by Exhibit 20 to 22 requested to take the Complaint before the Lok Adalat informing that, he do not want to proceed further.

3) Accordingly Complaint was placed for consideration before the Lok Adalat on 22nd December, 2008. Hence, the order:

ORDER

In view of the Exhibits 20 to 22 Complaint is disposed off in Lok Adalat.

Bombay,
22nd December, 2008.

A.A. LAD Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II AT MUMBAI**

1. Complaint No. CGIT-2/4 of 2003 Shikhore vs. Foreign
Post Office

AND

2. Complaint No. CGIT-2-1-06 of 2006 Shikhore vs. Foreign
Post Office

IN

CGIT-2/95 of 2005

Foreign Post Office v/s. their worker

Application for taking the above two complaints on
today's Board for withdrawal

MAY IT PLEASE YOUR HONOUR

Your honour may be pleased to take the above 2
complaints on today's Board as the complainants beg
to withdraw the complaints.

Mumbai,

22nd December, 2008.

JAIPRAKASH SAWANT, Advocate for Complainants

Proceedings of the Lok Adalat held on 22nd Decem-
ber, 2008.

Panel Members

1. Mr. M.B. Buchan, Advocate,
2. Mr. S.B. Kadam, Advocate,
3. Mrs. Ranjana Todenkar, Advocate.

Complaint No. CGIT-2/4 of 2003

B.R. Shikare and others ... Complainants.

Vs.

Post Master General, Videsh Dak ... Opponent
Bhawan Mumbai-1

Present:

J.P. Sawant, Advocate for two complainants.

Mr. V. Narayanan, Advocate for the opponents.

Advocates for the complainants files application
Ex.20 for taking the above matter on today's Board. Matter
taken on board today. Advocate for complainants files
application Ex. 22 for withdrawal of the complaints. Sent
for Tribunal for Award.

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2 AT MUMBAI**

Complaint No. CGIT-2/4 of 2003

IN

Reference No. CGIT-2/95 of 2001

Bhausaheb R. Shikhare ... Complainant

Vs.

The Post Master General Department ... Respondents
of Post, Videsh Dak Bhawan

Application for withdrawal of the complaint

MAY IT PLEASE YOUR

The complainant begs to withdraw the complaint on
the Central Government has issued the orders in favour of
the complainant regarding fixation of pay at the time of
absorption and, therefore, the complainant is desirous to
withdraw the complaint.

Mumbai,

22nd December, 2008.

JAIPRAKASH SAWANT, Advocate for Complainants

नई दिल्ली, 5 फरवरी, 2009

का.आ.523.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट मास्टर
जनरल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच,
अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-
करण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या कम्प्लेंट नं.
सीजीआईटी-2/1 ऑफ 2006 से इन रेफरेंस नं. सीजीआईटी-2/95
ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-02-2009
को प्राप्त हुआ था।

[सं. एल-40025/2/2009-आई आर (डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 5th February, 2009

S.O.523.— In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the Central
Government hereby publishes the award (Ref. No. Complaint
No. CGIT-2/1 of 2006 In Reference No. CGIT-2/95 of 2001)
of the Central Government Industrial Tribunal-cum- Labour
Court, No.II, Mumbai as shown in the Annexure, in the
Industrial Dispute between the employers in relation to the
management of Post Master General and their workman,
which was received by the Central Government on
5-2-2009.

[No. L-40025/2/2009-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II AT MUMBAI**

PRESENT: A.A. LAD Presiding Officer:

Complaint No. CGIT-2/1 of 2006

IN

Reference No. CGIT-2/95 of 2001

Shradhanand G. Savane,

Having address for correspondence

Office of the Post Master General

Department of Post, Videsh Dak Bhawan,

Mumbai 400 001.

... Complainant

v/s

The Post Master General,
Department of Post,
Videsh Dak Bhavan,
Mumbai 400 001.

... Opposite Party

APPEARANCE:

For the Complainant : Mr. Jaiprakash Sawant,
Advocate

For the Opponents : Mr. V. Narayanan,
Advocate.

Date of Passing the Award : 22-12-2008.

Complaint under Section 33-A of the Industrial Disputes Act, 1947.

AWARD

(1) The Complainant above-named has filed complaint under Section 33-A of the Industrial Disputes Act, 1947 at Exhibit 1 requesting to hold and declare that the Opposite Party has contravened the provisions of Section 33-A of the Industrial Disputes Act, 1947 and pray to direct Opposite Party to restore his basic pay to Rs. 2780 with effect from October, 2004.

(2) Said was replied by the Opposite Party by filing written statement at Exhibit 7. Applicant filed rejoinder at Exhibit 10 and he also filed affidavit at Exhibit 11 in lieu of the examination in chief, where he was cross examined also. He closed his evidence and filed closing purshis at Exhibit 12. Then Management examined its witness by filing affidavit at Exhibit 13. He was cross examined also by the workman. Opposite Party closed its evidence and filed closing purshis at Exhibit 14. Even written arguments were submitted at Exhibit 15 by the Complainant and the matter was fixed for passing order.

(3) However, by Exhibits 17 to 19 the Complainant prayed to take the Complaint before the Lok Adalat.

(4) Accordingly, Complaint was placed for consideration before the Lok Adalat on 22nd December, 2008 and disposed of as per terms of Exhibits 17 to 19.

Hence, the order:

ORDER

In view of the Exhibits 17, 18 and 19 Complaint is disposed of in Lok Adalat.

Bombay,

22nd December, 2008.

A.A. LAD, Presiding Officer

EXHIBIT NO. 17

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

1. Complaint No. CGIT-2/4 of 2003 Shikhore vs. Foreign Post Office.

AND

2. Complaint No. CGIT-2/1/06 of 2006 Science vs. Foreign Post Office

IN

CGIT-2/95 of 2005

Foreign Post Office v/s. their workmen

Application for taking the above two complaints on today's Board for withdrawal

MAY IT PLEASE YOUR HONOUR

Your honour may be pleased to take the above 2 complaints on today's Board as the complaints beg to withdraw the complaints.

Bombay,

22nd December, 2008.

JAIPRAKASH SAWANT, Advocate for Complainant

EXHIBIT NO. 18

Proceedings of the Lok Adalat held on 22nd December, 2008.

Panel Members

1. Mr. M.B. Anchan, Advocate,

2. Mr. S.B. Kadam, Advocate,

3. Mrs. Ranjana Todamkar, Advocate.

Complaint No. CGIT-2/1 of 2006

S.C. Savana

... Complainant.

Vs.

Post Master General, Videsh Dak Bhawan, Mumbai-1

... Opponent

Present:

J.H. Sawant, Advocate for the complainant.

Mr. V. Narayan, Advocate for the opponents.

Advocate for the complainant files application Ex. 17, for taking the above complaint on today's board. Matter taken on today's board.

Advocate for complainant files application Ex. 19 for withdrawal of the complaint sent for Tribunal for Award.

EXHIBIT NO. 19

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

Complaint No. CGIT-2/1 of 2006

IN

Reference No. CGIT-2/95 of 2001

S.C. Sovane

... Complainant

Vs.

The Post Master, Deptt. of Post

... Opposite Party

Application for withdrawal of the complaint

May it please your Honour

As the Central Government has recently issued orders benefited to the complainant in respect of fixation of pay at the time of absorption, the complainant is desirous to withdraw the complaint. The complaint may please be disposed of for want of prosecution.

Bombay,

22nd December, 2008.

JAIPRAKASH SAWANT, Advocate for Complainant

compensation of Rs. 20,000 to the disputant workman in lieu of his reinstatement and back wages.

14. The reference is answered exparte against the Union thus.

N.K.R. MOHAPATRA, Presiding Officer

List of witnesses Examined on behalf of the 2nd Party-workman

No witnesses examined on behalf of the 2nd Party-Workman.

List of Documents Exhibited on behalf of the 2nd Party-workman

No documents exhibited on behalf of the 2nd Party-Workman.

List of witnesses examined on behalf of the 1st Party-management.

M.W. 1-Sidhartha Sankar Ray.

List of Documents Examined on behalf of the 1st Party-Management.

No Documents exhibited on behalf of the 1st Party-Management.

नई दिल्ली, 6 फरवरी, 2009

का.आ. 525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 135/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-22015/9/2002-आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No.135/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Food Corporation of India and their workman, which was received by the Central Government on 06-02-2009.

[No. L-22015/9/2002-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH**

Case No.-135/2003

Shri Raju Masih S/o Shri Rafiq Masih, LTI Resident of Mohalla ISA Nagar, Mission Road, Pathankot, Distt. Gurdaspur (Punjab).

...Applicant

Versus

(1) The Asstt. Manager, Food Corporation of India, Chakki Bank, Pathankot, Distt. Gurdaspur (Punjab).

(2) The Distt. Manager, Food Corporation of India, Gurdaspur, Punjab.

(3) The Senior Regional Manager, Food Corporation of India, Regional Office, Punjab SCO No. 356-59, Sector-34-A, Chandigarh.

...Respondents

APPEARANCES

For the workman: None

For the management Shri N. K. Zakhmi

AWARD

Passed on: 22-1-09

Central Government vide notification No.-L-22015/9/2002-IR(C-II), dated 4-7-2003 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of FCI, represent by Sr. Regional Manager, Chandigarh in terminating Sh. Raju Masih S/o Shri Rafiq Masih from services instead of regularizing him in the job/post of DPS worker is legal and justified? If not, to what relief, the workman is entitled.

2. Workman is not present. The workman was called several times to appear in person as his identity in this itself is disputed. Despite repeated directions, the workman is not coming forward to clear his identity. As the identity of the workman is disputed and the workman is not interested to establish his identity, this case can not proceed further, therefore, the claim petition of the workman is dismissed for non-prosecution and in failure of ensuring personal presence as directed by this Tribunal and reference is returned as such to the Central Govt. be informed. File be consigned.

Chandigarh.
22-1-2009

G. K. SHARMA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2009

का.आ. 526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं शुगरकेन ब्रीडिंग इन्स्टीट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 135/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-42012/46/2003-आई आर (सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.135/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sugarcane Breeding Institute and their workman, which was received by the Central Government on 06-02-2009.

[No. L-42012/46/2003-IR (C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH

Case No. I.D. 135/2004

Shri Jaimal S/o Shri Dharam Singh, Village-Samora,
PO-Kheri Man Singh, Distt.-Karnal

...Applicant

Versus

The Head, Sugarcane Breeding Institute, Regional Centre,
Agarsain Marg, Karnal-132001

...Respondent

APPEARANCES

For the Workman : Shri Vikram Singh

For the Management : Shri Shri Amit Sharma

AWARD

Passed on : 23-1-09

Central Government vide notification No. L-42012/46/2003/IR(CM-II), dated 4-3-2004 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Sugarcane Breeding Institute in not granting temporary status and also non-regularizing of services of Shri Jaimal S/o Shri Dharam Singh w.e.f. 4-7-1981 is legal and justified ? If not, to what relief the workman is entitled to ?"

2. Case taken up in Lok Adalat. Long discussion took place. It is settled between the parties that workman will withdraw his reference and claim on the condition that whenever there will be any policy of the Government for conferring temporary status/regularization, the name of the workman shall be considered in terms of the policy on the basis of seniority list. In view of the settlement, the reference is disposed off in Lok Adalat. Central Government be informed.

Chandigarh.
23-1-09

G. K. SHARMA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2009

का.आ. 527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 49/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-40012/180/2002-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 527.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 06-02-2009.

[No. L-40012/180/2002-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH

Case No. 49/2003

Shri Vikramjit Singh S/o Shri Mehar Singh, VPO Kharian,
Tehsil Dehra, Kangra.

...Applicant

Versus

The D.E. Legal, Office of General Manager, Telecom BSNL,
Dharamshala (HP)-176 215

APPEARANCES

For the Workman : None
For the Management : Shri Sanjay Goel

AWARD

Passed on: 28-1-09

Central Government vide notification No. L-40012/180/2002 IR(DU), dated 2-1-2003 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of GMT Division/(BSNL), Dharamshala in terminating the service of Shri Vikramjit Singh, Ex-Daily rated Beldar is just and legal? If not, to what relief the workman is entitled to?"

2. Workman is not present. No representative of the workman is present. Representative of the management is present. Since morning, this reference was taken up several times. None was present for the workman. It is now 12PM. At this stage IO have no option otherwise than to return the reference as such to the Central Government because the workman is not interested in adjudication of this reference. Accordingly, the claim petition filed by the workman is dismissed and the reference is returned as such to the Central Government Central Government be informed.

Chandigarh.
28-1-09

G. K. SHARMA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2009

का.आ. 528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल प्रोविडेंट फंड कमिशनर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-42012/10/2006-आई आर (डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 528.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the

management of Regional Provident Fund Commissioner and their workmen, which was received by the Central Government on 06-02-2009.

[No. L-42012/10/2006-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH**

Case No. ID 29/2006

Shri Resham Singh S/o Shri Hakam Singh R/o Vill & PO Gill,
Patti, Distt. Bhatinda, Bhatinda (Punjab).

...Applicant

Versus

The Regional Provident Fund Commissioner, RPFC, R.O.
Chandigarh, SCO No. 4-7, Sector 17-D, Chandigarh.

... Respondent

APPEARANCES

For the Workman : Shri A. mit Sharma
For the Management : Shri B. R. Rattan

AWARD

Passed on: 23-1-09

Central Government vide notification No. L-42012/10/2006-IR(DU), dated 30-6-2006 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of RPFC, Bhatinda in terminating the services of Sh. Resham Singh, ex-driver w.e.f 12-4-2005 is just and legal? If not, what relief the workman is entitled to?"

2. The case is taken up in Lok Adalat. Workman is present. Prescribed authority of the management is also present. Learned counsel for both of the parties are present. It is discussed and settled that considering the number of years of service, the workman has rendered to the management as a driver, he will be provided the job on outsourcing as per the present Central Government policy. It is also settled that whenever there will be regular appointment, he will be considered strictly as per the rules of the department if found otherwise eligible and due to the long litigation and service rendered by him to the management, if he become overage, the period will be relaxed. In view of the above settlement, the reference is settled and disposed off in Lok Adalat. Central Government be informed.

Chandigarh.
23-1-09

G. K. SHARMA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2009

का.आ. 529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिहार क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 31/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2009 को प्राप्त हुआ था।

[सं. एल-12012/76/2007-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 529.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.31/2007) of Industrial Tribunal-cum- Labour Court, Patna as shown in the Annexure, in the Industrial Dispute between the management of Bihar Kshetriya Gramin Bank, and their workmen, received by the Central Government on 06-02-2009.

[No. L-12012/76/2007-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, SHRAM BHAWAN, BAILEY ROAD, PATNA.

Reference Case No. 31(C) of 2007

Between the management of Bihar Kshetriya Gramin Bank, Head Office Bhagal Singh Chowk, Munger (Bihar) and their workman Shri Sanjay Kumar Mandal, represented by Sri B. Prasad, Bihar Provincial Gramin Bank Employees Association, Patna.

For the Management : Shri Shekhar Prasad Singh,
Sr. Manager(PAD)
Management

Representative.

For the Workman : Sri B. Prasad, President,
Bihar Provincial Gramin
Bank Employees
Association, Saboo Complex,
Exhibition Road, Patna.

Present : Vasudeo Ram, Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dated 24th January, 2009

By adjudication Order No. L-12012/76/2007-IR(B-1) dated the 17th September, 2007, the Government of India,

Ministry of Labour, New Delhi in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) has referred the dispute between the management of Bihar Kshetriya Gramin Bank, Munger (Bihar) and their workman Shri Sanjay Kumar Mandal, represented by the President of Bihar Provincial Gramin Bank Employees Association to this tribunal for adjudication on the following :—

"Whether the action of the management of Bihar Kshetriya Gramin Bank, in terminating the services of Shri Sanjay Kumar Mandal without complying Section 25F of the I.D. Act and not reinstating and regularizing him in service, is legal and justified? If not to what relief the concerned workman entitled?"

2. The parties appeared on notice and filed the statement of claim and the written statement. The contention of the workman is that he had been appointed on 18-8-1994 on the post of Sweeper-cum-Messenger in Amarapur Branch of the Bank by the management of the then Bhagalpur-Banka Kshetriya Gramin Bank. He used to perform the duties of sweeper-cum-messenger in Bank from 9 A.M. to 5 P.M. and sometimes even beyond that as per requirement of the Bank. The workman used to be paid initially @ Rs. 2 per day which was subsequently raised to Rs. 65 per day. The workman used to be paid mostly on monthly basis through Bank's Debit Vouchers. In the year 2005 three rural regional Banks sponsored by UCO Bank, namely Bhagalpur-Banka Kshetriya Gramin Bank, Munger Kshetriya Gramin Bank and Begusarai Kshetriya Gramin Bank were amalgamated following the Central Government. Notification and after amalgamation the same was renamed as Bihar Kshetriya Gramin Bank with its headquarters at Manager. The Chairman of Munger Kshetriya Gramin Bank, was made its Chariman. Further, the case of the workman is that the Chairman of the Bank in utter violation of the law and in most arbitrary manner instructed the Branch Manager to terminate the services of the workman. Accordingly the services of the workman was terminated from 16-9-2006. On the request of the workman the union took up the matter with the management but the management did not consider their grievances and thereafter the union raised industrial dispute but the conciliation proceedings ended in failure due to non-compromising attitude of the management. Thereafter the dispute was referred for adjudication. According to the workman termination of his services is covered under section 2(00) of the Act. The management violated the mandatory provisions of Section 25F of 'the Act' and thus the management resorted to unfair labour practice as per Schedule V of 'the Act'. Further, the contention of the workman is that he worked for over ten years under the management and is in the midstream of his life having no other means of livelihood. According to the workman the action of the management in terminating the services of the workman, not reinstating and regularising

his services in the Bank is neither legal nor justified. The workman claims that he be reinstated with back wages and his services be regularized as full time-sweeper-cum-messenger.

3. The contention of the management is that Bihar Kshetriya Gramin Bank, (hereinafter called 'the Bank' for brevity) has been created under the Regional Rural Banks Act, 1976 (in short RRB Act) and as such is guided by the directions issued by Central Government in regard to policy matters involving public interest in discharging of its functions. The Central Government issued guidelines through NABARD about strength of manpower of the Bank and the circulars issued by NABARD in that connection is binding on the Bank management. Further, according to the management the appointment of any employee without following the procedures of appointment and without observing the rules of reservation is treated as back-door appointment and such employment will not give any right to such employees. Further, the management contends that as per Circular No. D.O. No. F4-27075-AC dated the 26th November, 1975 no peon or his equivalent by what ever designation called, would be employed by R R Banks. The services of the employees so appointed was directed to be dispensed with without delay. The representatives of Kshetriya Gramin Bank, approached the head office for employment of Sweepers and the matter was placed before the Board of Directors. After deliberations the Board of Directors decided to authorise each branch to spend Rs. 2 only perday from miscellaneous account on cleaning. It was also decided that a man can not work more than seven days and the person so engaged would not claim for appointment on that basis. The part-time sweeper-cum-messenger who were in service on 22-2-1991 and completed 240 days continuous service thereafter were treated as regular employees w.e.f. 2-2-1991. The management further contends that this workman was engaged on daily wages without following the norms and procedures of appointment and his engagement was against the Circular of NABARD and Central Govt. as there was already permanent sub-staff in the category in the branch. There is no sanctioned post in the Bank as daily wagers do not come within the purview of Service Regulations of the Bank. According to the management this claimant is not a workman as defined under Section 2(S) of 'the Act' and as such the reference itself is bad in law. The workman is also not the member of any union. The dispute raised by the claimant is also not an industrial dispute as defined under Section 2(K) of the Act. According to the management Section 25F of the Act has no application in this case nor the management has committed any unfair labour practice. According to the management the purported workman is not entitled to any relief and the reference is fit to be decided in favour of the management.

4. Upon the pleadings of the parties and the terms of reference the following points arise out of the decision :

- (i) Is the reference maintainable?
- (ii) Whether the action of the management of Bihar Kshetriya Gramin Bank in terminating the services of Shri Sanjay Kumar Mandal without complying Sec. 25F of the Act' is legal and justified?
- (iii) Whether the action of the management in not reinstating the workman in service is legal and justified?
- (iv) Whether the action of the management in not regularising the workman in service is legal and justified?
- (v) To what relief or reliefs, if any, the workman is entitled?

FINDINGS

Point No. (i) :

5. Both the parties have adduced evidence oral as well as documentary in support of their respective contentions. One Anil Kumar Officer, Personnel, of Bihar Kshetriya Gramin Bank, Munger has deposed (as M.W. 1) on behalf of the management. The workman himself has deposed (as W.W. 1) in support of his contentions. The management got exhibited photocopy of D.O. No. F4-27/75-AC dated 26-11-1975 of Ministry of Finance (Ext. M), photocopy of letter No. F2-27/80-R R B Govt. of India on appointment of messenger is Regional Rural Banks (Ext. M/1) suggesting employment of as many numbers with all benefits as are required within the framework of the guidelines of R.R.Banks, photocopy of D.O. No. F2-27/80 R. R. B. dated 16-12-1980 on the same issue (Ext. M/2) and photocopy of letter dated 28-5-1981 of Govt. of India on the subject of appointment of sweepers/messengers in R.R. Banks (Ext. M/3). As against that the workman got exhibited photocopy of letter dated 2-2-2008 of the Bank's Regional Office Bhagalpur concerning calculation of expenses to daily wager or part-time worker of Branch (Ext. W), photocopy of letter dated 31-8-2006 of Bihar Kshetriya Gramin Bank, Munger concerning not to engage any casual worker (Ext. W/1), photocopy of Circular No. 22/2003 dated 10-7-2003 concerning enhancement of wages payable to daily wage worker (Ext. W/2), Photocopy of Circular No. 49/2000 of Bhagalpur-Banka Kshetriya Gramin Bank (Ext. W/3), photocopy of payment vouchers (Exts. W/4 to W/6), photocopy of letter dated 22-9-2003 of Bhagalpur-Banka Kshetriya Gramin Bank concerning payment of D.A. to daily wage employees (Ext. W/7), photocopy of letter dated 11-10-2006 of Amarpur Branch showing that work was being taken from this workman (Ext. W/8), photocopy of letter dated 14-8-96 of Amarpur Branch Munger (Ext. W/9) showing recommendation for regularisation of this workman, photocopy of letter dated 18-11-1998 of UCO Bank (Ext. W/10) and photocopy of letter dated 31-12-1993 concerning payments to sweepers.

6. While challenging the maintainability of this reference the management its written statement have contended that daily wagers do not come within the purview of service Regulation of the Bank and they are not 'workman' as defined under Section 2(S) of the Act and the workman is not a member of any union and thus the dispute raised is not an 'industrial dispute' as defined under Section 2(K) of the Act and as such the reference itself is bad in law and is not maintainable. The definition of 'workman' as laid down under Section 2(S) of the Act reads as follows :-

"Workman" means any person (including and apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person:

- (i) who is subject to the Air Force Act, 1950(45 of 1950), of the Army Act, 1950(46 of 1950), or the Navy Act, 1957(62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature.

According to the said definition Sri Sanjay Kumar Mandal is undoubtedly a workman. As per the statement of M.W.I daily wagers do not come within the purview of Service Regulation of Bank. In this connection I have to mention that Service Regulations of the Bank can not override the statute, the law framed by the legislature, the Act.

There is no dispute on the point that the workman was not a member of any union. Section 36 of the Act which deals with the representation of the parties reads as follows:

36. Representation of parties :—(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

"(a) (any member of the executive or other office bearer)"

(b) (any member of the executive or other office bearer) of a federation of trade union to which the trade union referred to in clause(a) is affiliated;

(c) where the worker is not a member of any trade union, by (any member of the executive or other office bearer) of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed."

This workman though is not member of any union he is represented by the Office bearer of the trade union connected with the industry in which the workman was employed. Under such circumstances the reference can not be said not maintainable merely because the workman did not happen to be a member of any trade union.

Section 2(k) of the Act defines 'Industrial Dispute' as follows:

"Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

Keeping in view the discussions made above I find and hold that the dispute between the management and the workman is an 'industrial dispute' and the reference made for adjudication is maintainable in law. Point No. (i) is decided accordingly.

Point Nos. (ii) & (iii) :

7. At the very outset I would like to mention that the facts of this case are almost admitted. From the oral evidence of the parties and also from the pleadings of the parties it is admitted that the workman worked in Amarapur Branch of the Bank from 18-8-1994 to 15-9-2006, he was removed from the service w.e.f. 16-9-2006. It is also an admitted fact that the workman was not given any appointment letter nor he was given termination letter. It has been stated by the workman(W.W.I) and has not been controverted by the management that the workman worked from 9 A.M. to 5 P.M. and sometimes even after that as per requirement. He used to be paid monthly on daily basis through Vouchers. There is no dispute on the point that earlier he used to get @ Rs. 2 per day which was gradually increased. There is no dispute on the point that the workman used to get Festival advance and the same used to be recovered from his wages in instalments. The workman has filed documents in support of the same which need not require discussion because the facts admitted need not be proved. It is also an admitted fact that Bhagalpur-Banka Kshetriya Gramin Bank, Munger Kshetriya Gramin Bank and Begusarai Kshetriya Gramin Bank were amalgamated. Before amalgamation Bhagalpur-Banka Kshetriya Gramin

Bank was independent. All the three Kshetriya Gramin Banks named above were sponsored by UCO Bank. National Industrial Tribunal Award became applicable in the Kshetriya Gramin Banks from 1991. There is no dispute on the point that the Board of Directors of Gramin Bank increased the wages/pay of the Sweepers as per the increase in Govt. Scales. Copy of letter dated 22-9-2003 (Ext. W/8) also supports the same. Under the circumstances it is an admitted fact that the workman put in more than 240 days continuous service for about thirteen years. There is no dispute on the point that the workman was removed from the service on 16-9-2006 by the management without any notice, notice pay or compensation as required under Section 25F of the Act. The workman raised industrial dispute yet he was not reinstated. I may mention here that it was quite within the knowledge of the management that the workman was working may that be in violation of the Circulars of the Bank and the management not only made payments to the workman for his work rendered, it was enhanced from time to time following the enhancement in pay by the Government to its employees. The management did not take any action or punish the officer who engaged the workman and made payments in violation of the circulars of the Bank. That simply showing that the work was taken from the workman in connivance of the management. Under such circumstances the management can not take the plea that the claimant was not a workman and the dispute raised by him is not an industrial dispute. It is really peculiar that the management on the one hand took work from the workman for years together and on the other pleads that the engagement of workman was illegal and he can not claim any benefit.

8. Section 2(00) of the Act defines retrenchment as follows:-

"Retrenchment" means the termination by the employer of the service of a workman for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action but does not include.

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained there in; or
- (c) termination the service of a workman on the ground of continued ill health;

Under the circumstances discussed above I find that the termination of the services of the workman was

retrenchment as defined in the above noted Section. The retrenchment was done without compliance of the provisions of Section 25F of the Act. Under the circumstances I find and hold that the action of the management of Bihar Kshetriya Gramin Bank in terminating the service of the workman without complying Section 25F of the Act and not reinstating him in service is unfair Labour Practice and is illegal and unjustified. I may add that a plea is taken by the Bank that there is no sanctioned post or there is only one sanctioned post and hence another Sweeper-cum-Messenger can not be appointed. In this respect I find that sanctioning post is the executive work of the Bank. If it requires more than one Sweeper-cum-Messenger, the Bank can sanction another post. It cannot be said legal that work is taken for long years on daily wages. Point Nos. (ii) and (iii) are answered accordingly.

Point No. (iv):

9. It is an admitted fact that the workman was engaged on daily wages by the management and the workman worked for nearly thirteen years as Sweeper-cum-Messenger. It is also an admitted fact that there was no advertisement of the post of appointment, no examination for a selection meaning there by the procedures of appointment were not followed in taking the workman in employment. There are catena of decisions and it is well settled principle of law that no direction for regularisation of services of daily wage workman can be issued. Moreover regularisation in service is essentially the executive work, the work of the management and is not the business of tribunal. Under the circumstances, though the workman has served the management for a pretty long time and is in the midstream of his life it is for the management to consider his regularisation and can not hold as to whether the action of the management in not regularising the services of the workman was illegal or unjustified or otherwise. I may mention that on behalf of the workman para 4.410 of the award of National Industrial Tribunal for Regional Rural Banks has been referred in support of regularisation. But as already mentioned above this tribunal cannot pass an order for regularisation. This point is decided accordingly.

Point No. (v):

10. It has already been held above that the action of the management of Bihar Kshetriya Gramin Bank in terminating the services of the workman without complying the provisions of Section 25F of the Act is not only illegal it is unjustified also. It has also been held that the tribunal can not pass an order on the point of regularisation of the workman in service. The workman has served the management as Sweeper-cum-messenger for nearly 13 years and is in the midstream of his life. Under the circumstances I find and hold that the workman observes to be reinstated with backwages. This point is decided accordingly.

11. In the result, I find and hold that the action of the management of Bihar Kshetriya Gramin Bank, Munger in terminating the services of the workman without complying the provisions of Section 25F of the Act is illegal and unjustified and the workman deserves to be reinstated with back wages @ last paid. The management is directed to comply the same within two months from the date of publication of the Award.

12. And this is my Award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 06 फरवरी, 2009

का.आ. 530.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिहार क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, पटना के पंचाट (संदर्भ संख्या 29/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2009 को प्राप्त हुआ था।

[सं. एल-12012/74/2007-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2007) of Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure, in the Industrial Dispute between the management of Bihar Kshetriya Gramin Bank, and their workman, received by the Central Government on 06-02-2009.

[No. L-12012/74/2007-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, SHRAM BHAWAN, BAILEY ROAD, PATNA.

Reference Case No. 29(C) of 2007

Between the Management of Bihar Kshetriya Gramin Bank, Munger (Bihar) and their workman Shri Bipin Kumar represented by Shri B. Prasad, President, Bihar Provincial Gramin Bank Employees Association, Exhibition Road, Patna.

For the Management : Shri Shekhar Prasad Singh,
Sr. Manager (PAD)
Management Representative.

For the Workman : Sri B. Prasad, President,
Bihar Provincial Gramin
Bank Employees' Association,
Saboo Complex,
Exhibition Road, Patna.

Present : Vasudeo Ram, Presiding Officer, Patna.

AWARD

Patna, dated 23rd January, 2009.

By adjudication Order No. L-12012/74/2007-IR (B-I) dated the 17th September, 2007, the Government of India, Ministry of Labour, New Delhi in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) referred the dispute between the management of Bihar Kshetriya Gramin Bank, Head Office, Bhagat Singh Chowk, Munger (Bihar) and their workman Shri Bipin Kumar, represented by Shri B. Prasad, President of Bihar Provincial Gramin Bank Employees Association to this tribunal for adjudication on the following:

"Whether the action of the management of Bihar Kshetriya Gramin Bank, in terminating the services of Sri Bipin Kumar, without complying Section 25F of the I.D. Act and not reinstating and regularizing him in service, is justified? If not to what relief the workman concerned is entitled?"

2. Both the parties appeared on notice and filed statement of claim and written statement respectively. The contention of the workman is that he was appointed by the management of the then Bhagalpur-Banka Kshetriya Gramin Bank w.e.f. 2-2-1994 to discharge the duties of a Sweeper-cum-Messenger at Sabaur Branch of the Bank. He used to perform the duties from 9 A.M. to 5 P.M. and sometimes even beyond that as per requirement of the Bank. Initially he was paid @Rs. 2 per day which was subsequently enhanced to Rs. 44 per day. He was paid his wages mostly on monthly basis through Banks' Debt Vouchers. In the year 2005 three rural regional Banks sponsored by UCO Bank namely, Bhagalpur-Banka Kshetriya Gramin Bank, Munger Kshetriya Gramin Bank and Begusarai Kshetriya Gramin Bank were amalgamated following the Central Govt. notification and after amalgamation the same was renamed as Bihar Kshetriya Gramin Bank with its head quarters at Munger. The Chairman of Munger Kshetriya Gramin Bank was made its Chairman. Further, the case of the workman is that the Chairman of the Bank in utter violation of the law and in most arbitrary manner instructed the Branch Manager to terminate the services of the workman. Accordingly the services of the workman was terminated from 16-9-2006. On the request of the workman the union took up the matter with the management but the management did not consider their grievances and thereafter the union raised industrial dispute but the conciliation proceeding ended in failure due to non-compromising attitude of the management. Thereafter the dispute was referred for adjudication. According to the workman termination of his services is covered under Section 2 (oo) of 'the Act'. The management violated the mandatory provisions of Section 25F of 'the Act' and thus the management resorted to unfair labour practice as per Schedule V of 'the Act'. Further, the contention of the workman is that he worked for over ten years under the management and is in the midstream of his

life having no other means of livelihood. According to the workman the action of the management in terminating the services of the workman, not reinstating and regularising his services in the Bank is neither legal nor justified. The workman claims that he be reinstated with back wages and his services be regularised as full time-Sweeper-cum-Messenger.

3. The contention of the management is that Bihar Kshetriya Gramin Bank has been created under the Regional Rural Banks Act, 1976 (in short R.R.B. Act) and as such is guided by the directions issued by Central Govt. in regard to policy matters involving public interest in discharging of its functions. The Central Govt. issued guidelines through NABARD About strength of manpower of the Bank and the circulars issued by NABARD in that connection is binding on the Bank management. Further according to the management the appointment of any employee without following the procedures of appointment and without observing the rules of reservation is treated as back-door appointment and such employment will not give any right to such employees. Further, the management contends that as per Circular No. DO No. F4-27/75-AC dated the 26th November, 1975 no peon or his equivalent by whatever designation called, would be employed by R.R. Banks. The services of the employees so appointed was directed to be dispensed with without delay. The representatives of Kshetriya Bank approached the head office for employment of Sweepers and the matter was placed before the Board of Directors. The Board of Directors decided to authorise each branch to spend Rs. 2 only from miscellaneous account every day on cleaning. It was also decided that a man can not work more than seven days and the person so engaged would not claim for appointment on that basis. The part-time sweeper-cum-messenger who were in service on 22-2-1991 and completed 240 days continuous service there-after were treated as regular employees w.e.f. 2-2-1991. The management further contends that this workman was engaged on daily wages without following the norms and procedures of appointment and his engagement was against the Circulars of NABARD and Central Govt. as there was already permanent sub-staff in the category in the branch. There is no sanctioned post in the Bank as daily wagers do not come within the purview of Service Regulations of the Bank. According to the management this claimant is not a workman as defined under Section 2(S) of 'the Act' and as such the reference itself is bad in law. The workman is also not the member of any union. The dispute raised by the claimant is also not an industrial dispute as defined under Section 2(K) of the Act. According to the management Section 25F of the Act has no application in this case nor the management has committed any unfair labour practice. According to the management the purported workman is not entitled to any relief and the reference is fit to be decided in favour of the management.

4. Upon the pleadings of the parties and the terms of reference the following points arise out for decision :

(i) Is the reference maintainable?

- (ii) Whether the action of the management of Bihar Kshetriya Gramin Bank in terminating the service of Shri Bipin Kumar without complying Sec. 25F of 'the Act' is legal and justified?
- (iii) Whether the action of the management in not reinstating the workman in service is legal and justified?
- (iv) Whether the action of the management in not regularizing the workman in service is legal and justified?
- (v) To what relief or reliefs, if any, the workman is entitled?

FINDINGS.

Point No. (i) :

5. Both the parties have adduced evidence, oral as well as documentary in support of their respective contentions. One Anil Kumar, Sr. Manager, (Personnel) Bihar Kshetriya Gramin Bank, Munger has been examined (as M.W. 1) on behalf of the management and the workman has examined himself (as W.W. 1) in support of his case. The management has got exhibited the photocopy of D.O. No. F4-27/75-AC dated 26-11-1975 of Ministry of Finance Department of Banking (Ext. M) laying down the scales of pay of Officers and Staff, photocopy of letter dated 8-1-1993 of Bhagalpur-Banka Kshetriya Gramin Bank containing direction for maintaining cleanliness in the Bank (Ext. M/1), photocopy of letter No. 4559 dated 20-3-1993 regarding implementation of National Industrial Tribunal Award (Ext. M/2 and the photocopy of order passed by the Hon'ble High Court in C.W. J.C. No. 6822 of 2004 (Ext. M/3) on the point that it is not possible to issue any direction for regularisation of a workman engaged on daily wages without following the procedure of appointment. As against that the workman has got exhibited photocopy of letter dated 2-2-2008 of Bihar Kshetriya Gramin Bank regarding calculation of expenses on daily wages/part time workers of the Branch (Ext. W/10), photocopy of circular No. 49/2000 dated 25-11-2000 of Bhagalpur-Banka Kshetriya Gramin Bank concerning revised daily wage for casual sweepers in branches (Ext. W), photocopy of letter of the said Bank dated 25-11-2000 concerning payment of D.A. to daily wage employees (Ext. W/1), photocopy of letter of Sabour Branch dated 16-1-2003 showing this workman as part time worker and wages being paid to him by the branch as such (Ext. W/2), photocopy of letter dated 19-7-2004 of Sabour Branch showing payment of Bonus to this workman (Ext. W/3), photocopy of letter dated 16-1-2003 concerning the same subject (Ext. W/4), photocopy of letter dated 24-9-2003 (Ext. W/5) showing payment of Festival Advance to this workman, photocopy of letter dated 28-9-2002 on the same subject (Ext. W/6) photocopy of letter 10-1-2003 of Bhagalpur-Banka Kshetriya Gramin Bank furnishing detail information regarding part-time-sweepers/daily wage workers (Ext. W/7), photocopy of letter dated 22-9-2003 concerning payment of D.A. to daily wagers (Ext. W/8) and the details of Bonus work sheet of this workman (Ext. W/9).

6. While challenging the maintainability of this reference the management in its written statement have contended that daily wagers do not come within the purview of Service Regulation of the Bank and they are not 'workman' as defined under Section 2(S) of the Act and the workman is not a member of any union and thus the dispute raised is not an 'industrial dispute' as defined under Section 2(K) of the Act and as such the reference itself is bad in law and is not maintainable. The definition of 'workman' as laid down under Section 2(S) of the Act reads as follows :—

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the power vested in him, functions mainly or a managerial nature."

According to the said definition Sri Bipin Kumar is undoubtedly a workman. As per the statement of M.W. 1 daily wagers do not come within the purview of Service Regulation of Bank. In this connection I have to mention that Service Regulations of the Bank can not override the statute, the law framed by the legislature, the Act.

There is no dispute on the point that the workman was not a member of any union. Section 36 of the Act which deals with the representation of the parties reads as follows :

36: Representation of parties :—(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) (any member of the executive or other office bearer) of a registered trade union of which he is a member;

(b) (any member of the executive or other office bearer) of a federation of trade union to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by (any member of the executive or other office bearer) of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed."

This workman though is not a member of any union he is represented by the Office bearer of the trade union connected with the industry in which the workman was employed. Under such circumstances the reference can not be said not maintainable merely because the workman did not happen to be a member of any trade union.

Section 2(g) of the Act defines 'Industrial Dispute' as follows :

"Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

Keeping in view the discussions made above I find and hold that the dispute between the management and the workman is an 'industrial dispute' and the reference made for adjudication is maintainable in law. Point No. (i) is decided accordingly.

Point : Nos. (ii) & (iii) :

7. At the very Outset I would like to mention that the facts of this case are almost admitted. From the oral evidence of the parties and also from the pleading of the parties it is admitted that the workman worked in Sabour Branch of the Bank from February, 1994 to 15-9-2006, he was removed from the service w.e.f. 16-9-2006. It is also an admitted fact that the workman was not given any appointment letter nor he was given termination letter. It has been stated by the worker (W.W. 1) and has not been controverted by the management that the workman worked from 9 a.m. to 5 p.m. and sometimes even after that as per requirement. He used to be paid monthly on daily basis through vouchers. There is no dispute on the point that earlier he used to get @Rs. 2 per day which was gradually increased. There is no dispute on the point that the workman used to get Festival advance and the same used to be recovered from his wages in instalments. The workman has filed documents in support of the same which need not require discussion because the facts admitted need not be proved. It is also an admitted fact that Bhagalpur-Banka Kshetriya Gramin Bank, Munger Kshetriya Gramin Bank and Begusarai Gramin Bank were amalgamated. Before amalgamation Bhagalpur Banka Kshetriya Gramin Bank was independent. All the three Kshetriya Gramin Banks named above were sponsored by UCO Bank. National Industrial Tribunal Award became applicable in the Kshetriya Gramin Banks from 1991. There is no dispute on the point that the Board of Directors of Gramin Bank increased the wages/pay of the Sweepers as per the increase in Govt. Scales. Copy of letter dated 22-9-2003 (Ext. W/8) also supports the same. Under the circumstances it is an admitted fact that

the workman put in more than 240 days continuous service for about thirteen years. there is no dispute on the point that the workman was removed from the service on 16-9-2006 by the management without any notice, notice pay or compensation as required under Section 25F of the Act. The workman raised industrial dispute yet he was not reinstated. I may mention here that it was quite within the knowledge of the management that the workman was working may that be in violation of the Circulars of the Bank and the management not only made payments to the workman for his work rendered, it was enhanced from time to time following the enhancement in pay by the Government to its employee. The management did not take any action or punish the officer who engaged the workman and made payments in violation of the circulars of the Bank. That simply shows that the work was taken from the workman in connivance of the management. Under such circumstances the management can not take the plea that the claimant was not a workman and the dispute raised by him is not an industrial dispute. It is really peculiar that the management on the one hand took work from the workman for years together and on the other pleads that the engagement of workman was illegal and he can not claim any benefit.

8. Section 2(oo) of the Act defines retrenchment as follows :

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination the service of a workman on the ground of continued ill health;

Under the circumstance discussed above I find that the termination of the services of the workman was retrenchment as defined in the above noted Section. The retrenchment was done without compliance of the provisions of Section 25F of the Act. Under the circumstances I find and hold that the action of the management of Bihar Kshetriya Gramin Bank in terminating the services of the workman without complying Section 25F of the Act and not reinstating him in service is unfair Labour Practice and is illegal and unjustified. I may add that a plea is taken by the Bank that

there is no sanctioned post or there is only one sanctioned post and hence another Sweeper-cum-Messenger can not be appointed. In this respect I find that sanctioning post is the executive work of the Bank. If it requires more than one Sweeper-cum-Messenger, the Bank can sanction another post. It can not be said legal that work is taken for long years on daily wages. Point Nos. (ii) and (iii) are answered accordingly.

Point No. (iv) :

9. It is an admitted fact that the workman was engaged on daily wages by the management and the workman worked for nearly thirteen years as Sweeper-cum-Management. It is also an admitted fact that there was no advertisement of the post of appointment, no examination for selection meaning there-by the procedures of appointment were not followed in taking the workman in employment. There are catena of decisions including Ext. M/3 and it is well-settled principle of law that no direction for regularisation of services of daily wage workman can be issued. Moreover regularisation in service is essentially the executive work, the work of the management and is not the business of tribunal. Under the circumstances, through the workman has served the management for a pretty long time and is in the midstream of his life; it is for the management to consider his regularisation, this tribunal can not issue direction for regularisation and can not hold as to whether the action of the management in not regularising the services of the workman was illegal or unjustified or otherwise. I may mention that on behalf of the workman para 4.413, of the award of National Industrial Tribunal for Regional rural Banks has been referred in support of regularisation. But as already mentioned above this tribunal can not pass an order for regularisation. This point is decided accordingly.

Point No. (v) :

10. It has already been held above that the action of the management of Bihar Kshetriya Gramin Bank in terminating the services of the workman without complying the provisions of Section 25F of the Act is not only illegal it is unjustified also. It has also been held that this tribunal can not pass an order on the point of regularisation of the workman in service. The workman has served the management as sweeper-cum-messenger for nearly 13 years and is in the midstream of his life. Under the circumstances. I find and hold that the workman observes to be reinstated with back wages. This point is decided accordingly.

11. In the result I find and hold that the action of the management of Bihar Kshetriya Gramin Bank, Manager in terminating the services of the workman without complying the provisions of Section 25F of the Act is illegal and unjustified and the workman deserves to be reinstated with back wages & wages last paid. The management is directed to comply the same within two months from the date of publication of the Award.

12. And this is my Award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 6 फरवरी, 2009

का.आ. 531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम के पंचाट (संदर्भ संख्या 03/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-12012/219/2005-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 531.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Federal Bank Ltd., and their workmen, received by the Central Government on 6-2-2009.

[No. L-12012/219/2005-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM
Present: Shri P.L. Norbert, B.A., LL.B., Presiding Officer
(Tuesday, the 20th day of January, 2009/30th Pausa 1930)
LD. No. 03/2006

Union:

The General Secretary,
Federal Bank Employees' Union,
Central Office, P.B. No.10,
Alwaye-683 101.

By Adv. Shri. C. Anil Kumar.

Management:

The Chairman,
The Federal Bank Limited,
Federal Towers, Post Box No. 103,
Head Office, Alwaye-683 101.

By Adv. M/s. B.S. Krishna Associates.

This case coming up for hearing on 16-1-2009, this Tribunal-cum-Labour Court on 20-1-2009 passed the following:

AWARD

This is a reference made under Section 10 (1) (d) of Industrial Disputes Act. The reference is:

“Whether the action of the management of Federal Bank Limited in imposing the punishment of dismissal to Shri Mathew Cyriac from the service without notice is justified or not? If not, what relief the workman is entitled to?”

2. The factual position of the case in brief is as follows: Shri. Mathew Cyriac was the Clerk of Rajaji Nagar Branch of Bangalore of the Federal Bank in the year 2002. While working as Special Assistant it is alleged that he had fraudulently withdrawn Rs. 20,000 from the SB account of a customer on 12-10-2002 and misappropriated the same. The customer complained to the management that she had not withdrawn such amount. The management initiated disciplinary action against the workman Sri. Mathew Cyriac by issuing a charge sheet. An enquiry was ordered. In the enquiry the workman was found guilty and the disciplinary authority dismissed him from service. Though he filed an appeal, he did not succeed. Hence an industrial dispute was raised by the union.

3. According to the union the workman has not committed any misconduct as alleged by the management. The enquiry was conducted in violation of the principles of natural justice. The allegation is raised against the workman to cover-up lapses in the banking procedure followed in the branch. Crucial witness like the complainant was not examined in the enquiry. The workman was not given a proper opportunity to prove his innocence. The Enquiry Officer came to the conclusion without properly appreciating the evidence. The findings are perverse. The Enquiry Officer was biased and was acting under the instructions of the management. The disciplinary authority imposed the punishment in a mechanical manner without properly analysing the evidence. The clean past record of the worker was not taken into consideration while imposing the punishment. At any rate it is shockingly disproportionate to the charges. The workman is out of employment and he is not employed anywhere else. The workman is entitled to be reinstated.

4. According to the management the enquiry was conducted in full compliance with the principles of natural justice. The workman was defended by an office bearer of the union in the enquiry. The workman participated in the enquiry throughout. The management witnesses were cross examined by the defence representative. Though opportunity was given to the defence to adduce evidence, no witness was examined on defence side. A copy of the report was furnished to the workman and he was heard by the disciplinary authority regarding the findings. He was also heard regarding the proposed punishment. Though an appeal was filed by the workman, he did not succeed. The disciplinary authority did not find any extenuating circumstances to impose a lesser punishment. There is no reason to interfere either with the findings or punishment.

5. In the light of the above contentions the following points arise for consideration:—

1. Is the finding sustainable?

2. Is the punishment proper?

The evidence consists of Ext. M1 Enquiry File alone.

6. Point No.1:— Ext. E1 is the charge sheet. The allegation is that on 12-10-2002 the workman Sri. Mathew

Cyriac by using a withdrawal slip had fraudulently withdrawn Rs. 20,000 from the joint SB account of Smt. S. Yesoda and Ms. R.P. Malarvizhi and misappropriated the money. Ext.E-2 is the reply of the workman to the charge sheet wherein he has merely denied the charge without stating anything further. Ext.ME-13-A is the original complaint of Smt. Yesoda submitted to the bank on 21-11-2002. The workman was the Special Assistant in the cash section on 12-10-2002. Ext.ME-6 is the work allotment order. The workman was allotted cash section-III pertaining to SB, CD, ODCC-2 etc. It was a single window operation. There is no dispute regarding the work allotment. Ext. ME-9 is memo of instructions of the bank regarding delegation of powers for passing cheques and vouchers, Column No.4 relates to Special Assistant who is empowered to pass cash, cheques and vouchers upto and including Rs. 20,000. Since it was a single window operation, the entire process regarding withdrawal of money from SB account could be posted, passed and payment effected by the workman himself on 12-10-2002.

7. It is an admitted fact that the withdrawal was done through a withdrawal form and not by cheque. Ext.ME-5 is the withdrawal form used for withdrawing Rs.20,000 from the joint account of Yesoda and Malarvizhi. The withdrawal form is seen signed by customer Smt. Yesoda. The management alleges that the signature does not tally with the specimen signature and it is entirely different. Ext. ME-4 are the account opening forms signed and submitted by Yesoda and Malarvizhi. They contain their specimen signatures. Smt. Yesoda's specimen signature shows that she subscribes her signature by putting her initial 'S' first followed by her name Yesoda. The initial is written in English and the name in Tamil. However in Ext.ME-5, withdrawal form the name is written in Tamil first and the initial 'S' at the end. In the signature there is overwriting also. The amount written in words is also wrong. Instead of 'thousand' it is written 'sounsends'. Ext.ME-13A complaint of Yesoda and ME-17 remittance slip signed by Smt. Yesoda on 30-9-2002 contain her admitted signatures. They are in accordance with the specimen signature in Ext.ME-4. Thus Ext.ME-5 withdrawal slip contains an entirely different signature. It is possible that signatures of the same person may vary slightly over a period of time, but cannot be entirely different. A person cannot commit a mistake in putting his initial at the end of the name when usually he puts his signature by writing the initial in the beginning. The complaint of the customer Ext.ME-13A is that on 12-10-2002, she had not come to the bank or withdrawn Rs. 20,000. The bank has no case that the amount in words were written by the workman nor do they say that the workman has forged the signature of the customer in the withdrawal form. The management alleges that he has managed to get the form filled up and has withdrawn the money. Therefore, the question is, who has done the mischief?

8. I have already mentioned that as per the work allotment order and delegation of powers the workman could post a withdrawal and pass the same as well as effect payment being a single window operation. As per Ext.ME-15 attendance register, he was present on 12-10-2002 and was working in the cash section. Ext.ME-11A is the original pass book of the customer. According to the management the pass book was not submitted on 12-10-2002 for making entry regarding withdrawal as the customer had not sought withdrawal of any amount on that day and as she had not approached the bank on that day. Therefore, the withdrawal of Rs. 20,000 was recorded in the pass book only on a subsequent date when the customer came to the bank with the pass book. The pass book shows that at no time the customer had withdrawn money using withdrawal form but only through cheque. It is the disputed transaction that took place without a cheque and by using a withdrawal form. As per memo of instructions of the bank para 6.7.19 of Ext.ME-10 while issuing withdrawal form to a customer the concerned checking official must indicate on it the name and account number of the person to whom it is issued and initial it. However, it is pointed out by the union that this procedure is not strictly followed in the Rajaji Branch and it is also admitted by MW1 the Investigating Officer (Sr. Manager, Vigilance) (page 18 and 22 of the proceedings of enquiry). Assuming that the instructions are not strictly followed in the branch still it was the duty of the workman to verify the signature in the withdrawal form with the specimen signature especially when no pass book was presented. Not only the signature was different but the amount in words was also wrongly written. At the end of a day the withdrawal forms and vouchers of that day have to be handed over to the main cash section along with the cash balance. This is not disputed by the union. But the disputed withdrawal slip as well as other vouchers of that day were not handed over on 12-10-2002 but were kept in the table drawer of the workman. It is when the customer made a complaint to the Branch Manager and it is when the matter was looked into that the disputed withdrawal slip and other vouchers of 12-10-2002 were detected in the table drawer of the workman on 14-11-2002. Ext.ME-2 series are such vouchers. The workman has no case that he used to keep sometimes the vouchers without handing over them to the main cash section at the end of a day. It is not one or two vouchers but as many as 20. Had it happened by oversight at least on the next day he would have handed over the same to the main cash section. But it was lying there till 14-11-2002 (nearly 32 days).

9. It is relevant to note the statement given by the workman to the investigating officer of the Vigilance Department of the bank, MW1. The statement is Ext. ME-21. According to the workman 12-10-2002 being a Saturday it was a busy day for the bank. Smt. Yesoda had approached him for withdrawing Rs. 20,000. As she was not having a cheque with her he had issued a withdrawal

form. He does not remember whether he had insisted for pass book while issuing the withdrawal form. He also does not remember who had filled the withdrawal form. But he admits that he had posted the withdrawal and passed it and payment was effected. He also says that he had verified the signature in the withdrawal form before passing and paying the amount. But he does not remember whether he had noticed the mistake in spelling of the word 'thousand'. He admits that usually paid cheques are handed over to the main cash section along with the balance cash at the end of the day. However on 12-10-2002 the paid cheques pertaining to his section were not handed over to the main cash section. But he had put them in his table drawer by over sight. On the next day he did not remember that fact and so they remained in the drawer of his table unnoticed among some other papers. Later they were taken by the bank officials. He also says that in view of the complaint of the customer he had informed the Manager that he was willing to remit Rs.20,000 so that any black mark against him would be removed. He also says that he was also worried about the balance house loan amount of Rs. 1½ lakh to be disbursed to him. The statement is signed by the workman after noting at the foot of the statement that whatever is mentioned in the statement are correct. As per Ext.ME-15(a) attendance register on 14-11-2002 he was on leave. While investigating into the complaint the officers came across the withdrawal slip in the drawer of the table of the workman. It is to be noted that the withdrawal of Rs.20,000 was entered in all books of accounts as well as Cashier's Scroll for 12-10-2002. Ext. ME-3 is account statement of customer Yesoda and Malarvizhi. The withdrawal is recorded in Ext.ME-3. Ext.ME-7 is Cashier's scroll of 12-10-2002. SI.No.20 relates to payment of Rs.20,000 from the SB account 3056 of Smt. Yesoda. Ext.ME-11 (A) pass book reveals that at no time the customer had withdrawn money without a cheque. The workman was the concerned clerk, who had dealt with the transaction and it had not gone to the hands of any other official of the bank since it was a single window operation. Therefore the workman is bound to explain as to how this had happened. As already mentioned, to the memo of charges he gave Ext. E-2 reply merely by denying the charge. However Ext.ME-21 statement of the workman given to the Vigilance Officer pin him down to the allegation that he had kept the disputed withdrawal slip as well as other cheques and vouchers of 12-10-2002 in his drawer of the table without handing them over to the main cash section for days together. No similar circumstances on any other day had happened in the past. He had promptly expressed his willingness to remit Rs.20,000 to make good the loss suffered by the customer. It is not a small amount. Nobody had compelled him to remit the amount not was there any promise from the officers of the bank to pardon him and to drop disciplinary action

in case remittance was made. An innocent person would not shell out so much money to pacify a customer especially when he was sure that the customer had approached him for withdrawing the money (See Ext.ME-21). The workman has no case that corresponding entry in the pass book was made by him on 12-10-2002 itself. He had not verified the signature of the customer as well as the other writings in the withdrawal slip, it in fact either the customer or somebody on her behalf had submitted the withdrawal slip. These circumstances point the finger at the workman. The finding of the enquiry officer are thus based on materials on record and requires no interference.

10. Point No. 2:— The punishment imposed by the disciplinary authority is dismissal. The workman had submitted to the Disciplinary Authority as well as the Appellate Authority the extenuating circumstances. He submitted that he is from a poor family. He has to look after wife and 2 school going female children. He was in the midst of construction of a house, which is not yet completed. After the suspension he is without any job and he is under financial crunch. The family depends on him for their livelihood and there is no other source of income. He has a clean past record of 27 years and he promises to be earnest in future. These circumstances were considered by both authorities. It is seen from the order of the disciplinary authority that because of the misdeed of the workman the customer had withdrawn the entire remaining amount from their account and the bank has lost the business of a valuable customer. In a banking institution where money of the public are handled, confidence of the public should be the prime concern of the bank. If the customers find that the officials of the bank are not honest and their money is not safe in their hands, slowly customers may drop away. The long experience of the workman did not stand him in good stead to serve the bank better. The financial need of the family also did not deter him from committing mischief. Considering the gravity of the misconduct I don't think that the dependency of the family members can be a reason for showing leniency in the matter of punishment. Hence I do not propose to interfere with the punishment either.

In the result an award is passed finding that the action of the management in dismissing the workman Sri. Mathew Cyriac from service is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of January, 2009.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the Union : Nil.
 Witness for the Management : Nil.
 Exhibit for the Union : Nil.
 Exhibit for the Management :

M1 - Enquiry File

नई दिल्ली, 6 फरवरी, 2009

का.आ. 532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ संख्या -03/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2009 को प्राप्त हुआ था।

[सं. एल-12012/132/2006-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th February, 2009

S.O. 532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam. as shown in the Annexure in the Industrial Dispute between the management of Federal Bank Ltd., and their workmen, received by the Central Government on 6-2-2009.

[No. L-12012/132/2006-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri P.L. Norbert, B.A., LL.B., Presiding Officer

Wednesday the 16th day of January, 2009/26th Pausa
1930

I.D. 03/2007

Union :

The General Secretary,
 Federal Bank Employees' Union,
 Central Office,
 Alwaye-683 101.
 By Adv. Shri. C. Anil kumar.

Management :

The Chairman,
 The Federal Bank Limited,
 Head Office, Alwaye-683 101.

By Adv. M/s. B.S. Krishna Associates.

This case coming up for hearing on 14-1-2009, this Tribunal-cum-Labour Court on 16-1-2009 passed the following.

AWARD

This is a reference made under Section 10 (1) (d) of Industrial Disputes Act. The reference is:

“Whether the action of the management of Federal Bank Ltd. with its headquarters at Alwaye, Kerala in dismissing from service of Shri M. K. Binu, Clerk (PF No.6339) of Konni Branch without notice vide order dated 24-2-2006 is justified? If not, what relief the concerned workman is entitled to?”

2. Facts of the case in brief are as follows:— Sri. M.K. Binu was a Clerk of Federal Bank. Konni Branch. On the allegations of absence without leave and unauthorised absence without intimation for a period exceeding 30 days he was proceeded against for disciplinary action. An enquiry was ordered and he was found guilty of the charges and was dismissed from service.

3. According to the union which has taken up the cause of the workman the enquiry was conducted in violation of principles of natural justice and fairness. the workman was not given a fair opportunity to defend in the enquiry. The enquiry Officer was biased. The findings of the Enquiry Officer are perverse. The disciplinary authority without applying its mind concurred with the findings of Enquiry Officer. The appellate authority concurred with the findings and punishment ordered by the disciplinary authority without considering the extenuating circumstances. The punishment is disproportionate to the charges. The workman is entitled to be reinstated with back wages, continuity of service and all other consequential benefits.

4. According to the management the workman was remaining absent continuously without intimation from 1-9-2005 onward. A notice was issued to him directing him to report for duty immediately. He neither complied with the direction nor applied for leave. Prior to that he had remained absent from 16-8-2005 to 29-8-2005 without complying with leave rules. On 30-8-2005 he applied for privilege leave for 14 days on sick ground. He failed to apply for leave on time. His leave record is highly

unsatisfactory. He remained absent unauthorisedly for 498 days on various occasions in the past. He was punished three times for absence without leave and unauthorised absence. But he has not made any improvement. The workman did not attend the enquiry though notice was given to him by the Enquiry Officer. On the basis of the evidence adduced by the management the Enquiry Officer came to the conclusion that the workman is guilty of the charges. The disciplinary authority concurred with the findings and proposed punishment of dismissal. The workman was given an opportunity of hearing regarding proposed punishment. Thereafter he was dismissed from service. The Appellate Authority did not accept the submissions of the workman who appeared through union representative for hearing. The punishment is in proportion to the gravity of the charges. There is no reason to interfere either with the findings or punishment.

5. In the light of the above contentions the following points arise for consideration :

1. Is the enquiry valid?
2. Are the findings sustainable?
3. Is the punishment proper?

The evidence consists of the oral testimony of MW1 and documentary evidence of Ext.M1 on the side of management and no evidence on the side of the union.

6. Point No. 1:— It is contended in the claim statement that the enquiry was conducted violating the principles of natural justice. The workman was not given an opportunity to defend. The enquiry proceeded ex parte. Ext.M1 is the enquiry file. It shows that the workman was given notice by the Enquiry Officer regarding date and venue of enquiry. The enquiry was posted on 12-12-2005 at 2.45 p.m. at Konni Branch of the Federal Bank. The workman remained absent. No representative was engaged by the workman. There was no intimation to the Enquiry Officer regarding the reason for his absence. In the circumstances the Enquiry officer was constrained to proceed with the enquiry ex parte. Two management witnesses were examined and 12 documents were marked on management side as Exts. ME 1 to 12 and 5 documents were marked as enquiry documents Exts. E1 to E5. The Enquiry Officer concluded the proceedings on the same day. Then he sent a copy of the proceedings to the workman on 14-12-2005. The proceedings show that the workman was given time up to 24-12-2005 for submitting his comments regarding the enquiry proceedings. However the workman on 30-12-2005 sent a letter to the Enquiry Officer stating that he had received a copy of the enquiry proceedings, that he could neither attend the office for duty since 1-9-2005 nor apply for leave on time on account of certain unavoidable family problems. It is also stated that he could not attend the

enquiry or inform the Enquiry Officer for reasons beyond his control. However, there was no request for adjournment of the enquiry for the purpose of providing a chance to the workman to cross examine the management witnesses and for adducing defence evidence. Since there was no request the Enquiry Officer proceeded to draw his conclusions on the basis of the materials on record. There is nothing to show that the Enquiry Officer has violated either the rules of procedure or principles of natural justice. If the workman really wanted to defend the charges he would have definitely made a request to the Enquiry Officer to give him one more chance. In view of the above circumstances I hold that the enquiry is valid.

7. Point No. 2:— There are two charges. Ext.P1 is the charge sheet. The first charge is that the workman remained absent without applying for leave from 16-8-2005 to 29-8-2005. He resumed duty on 30-8-2005. Then he submitted a leave application with medical certificate and a fitness certificate. They are Exts.ME-5 to 7. As per Ext.ME-5 leave application the leave applied was privilege leave for 14 days on sick ground. The Bank Manager did not recommend for sanction of leave while forwarding the application to the head office due to the habit of the workman in remaining away from duty without intimation on and off. As per para 13.2 of the First Bipartite Settlement (General Rule) an employee, who desires to obtain leave, should apply in writing one month before the due date for leave, except in urgent or unforeseen circumstances including illness. As per leave rules he has also to intimate his address while on leave. No doubt by Ext.ME-5 he applied for privilege leave for 14 days on sick ground. Ext.ME-6 medical certificate is dated 16-8-2005 and ME-7 fitness certificate is dated 29-8-2005. The fact that he was sick does not mean that he need intimate or apply for leave only after resumption of duty. Without inordinate delay he should have intimated his absence and submitted leave application though he could not have applied for leave in advance since the ground is illness. He had also not given his address during the leave period. Ext.ME-1 attendance register shows that he was absent from 16-8-2005 to 29-8-2005. Thus he had not complied with the leave rules as per para 19.7(a) and it is a minor misconduct of absence without leave. The Enquiry Officer has, therefore, found him guilty. The finding requires no reconsideration.

8. The 2nd charge is that the workman remained absent unauthorisedly without intimation exceeding 30 days from 1-9-2005 onwards. He has never applied for leave for the period from 1-9-2005 onwards. Ext.ME1 is the attendance register from August 2005 to December 2005. Ext.ME-2 is a notice dated 12-9-2005 directing the workman to report for duty immediately. This was preceded by a telegram to the same effect. There was no response. He also did not apply for leave. Ext.ME-3 is a report of

Sr. Manager to the Chief Manager of P&IR department, Head Office informing about the unauthorised absence of the workman. It is alleged that the workman was a chronic absentee. He remained absent unauthorisedly and on loss of pay for 498 days on various occasions in the past. He was punished three times for such absence, twice with censure and once by reduction of basic pay by two stages. The instant absence is a 4th occasion. Ext.ME-8 is the order of Disciplinary Authority regarding disciplinary action for absence without leave for 46 days during 2002. The punishment imposed then was censure. Ext.ME-9 is another order of the disciplinary authority imposing the punishment of censure for unauthorised absence for 68 days at different intervals from March to July, 2003. Ext. ME-10 is another order of the disciplinary authority for remaining absent unauthorisedly and without intimation exceeding 30 days from 15-9-2003 and for issuing a cheque without keeping sufficient balance in his account. The workman was found guilty in the enquiry and disciplinary authority proposed the punishment of dismissal from service. The workman was heard regarding the proposed punishment. Thereafter Ext.ME-12 order of punishment was passed by the disciplinary authority reducing basic pay by two stages. A 4th time now the workman has remained absent from 1-9-2005 onwards. Even in the enquiry he remained absent. The previous penalties did not instill in him the desire to be regular and loyal to his duties. He did not submit any explanation to the charge sheet. However, he appeared before the disciplinary authority as well as the appellate authority for a hearing. The submissions made by the workman are recorded by the disciplinary authority as well as appellate authority. The reasons stated are that he was entangled in a debt trap which vexed him throughout and hence he was unable to attend the office. He also made a submission regarding his family background. According to him he has to look after aged parents, wife and two children. He is the sole bread winner of the family. There is no other source of income. It has to be noted that while hearing regarding the proposed punishment in respect of the disciplinary proceedings regarding unauthorised absence exceeding 30 days during September 2003 and the proposed penalty by the disciplinary authority he had mentioned that the money owed to one Johnson which had created a lot of problems in his life, was already paid and settled. However, the same problem is again put forward in the present disciplinary proceedings (before the disciplinary authority and appellate authority). It means that though his problem is solved he has no genuine and earnest intention to return to duty. He has no doubt many more years to superannuate. Ext.ME-1 attendance register shows that he remained absent continuously from 1-9-2005 onwards. As per para 21(ii) (p) of 6th Bipartite Settlement dated 14-2-1995 remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days is a gross misconduct (page 475 of Bipartite Settlement, M/s. H.P.J. Kapoor Publication, 12th Edition). On the basis of

the documentary evidence as well as the oral evidence on the management side the Enquiry Officer came to the conclusion that the workman is guilty of the misconduct aforementioned. There is absolutely no infirmity in the findings.

9. Point No. 3:— According to the union the punishment is harsh and disproportionate. The workman may be given a chance to improve. It is to be noted that as already mentioned the workman is a chronic absentee. The bank was finding it difficult to run the office smoothly as the workman was remaining absent without intimation on and off. He was punished three times for similar offence with censure twice and reduction of basic pay by two stages once, as mentioned supra. Despite, there is no trace of improvement in him. In fact, the disciplinary authority on a previous occasion had, by Ext.ME-10 order proposed punishment of dismissal for misconduct falling within para 21(ii)(p) of 6th Bipartite Settlement. However, after hearing the workman a lenient view was taken by the disciplinary authority with a view to give him a chance to improve, by imposing a lesser punishment of reduction of basic pay by two stages. Hardly after four months, he fell into the same sin of absenteeism once again. In the above circumstances the management was not in a position to show any leniency to him. The poor financial family background cannot be a reason to show any leniency in the matter of punishment as he has not learned any lesson from the previous disciplinary actions. His indifferent attitude has added burden not only to his family but also to the office. The office had to function many a time without a member of the staff. In the circumstances I don't think that the punishment is either disproportionate to the charges or harsh.

In the result an award is passed finding that the action of the management in dismissing the workman from service is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 16th day of January, 2009.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the Union	:	Nil.
Witness for the Management	:	
MW1 - 5-1-2009	-	Shri V.J. Joseph.
Exhibit for the Union	:	Nil.
Exhibit for the Management	:	
M1 - Enquiry File.		

नई दिल्ली, 9 फरवरी, 2009

का.आ. 533.—राष्ट्रपति श्री मनोरंजन पटनायक को दिनांक 2-2-2009 (पूर्वाह्न) से 5 वर्ष की अवधि के लिए, उनके 65 वर्ष की आयु का होने अथवा अगले आदेशों तक, जो भी पहले हो, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. ए-11016/8/2007-सीएलएस-II]
पी. के. ताम्रकार, अवर सचिव

New Delhi, the 9th February, 2009

S.O. 533.—The President is pleased to appoint Shri Manoranjan Pattnaik as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Asansol w.e.f. 2-2-2009 (F.N.) for a period of five years or till he attains 65 years of age or until further orders, whichever is earlier.

[No. A-11016/8/2007-CLS-II]
P.K. TAMRAKAR, Under Secy.

नई दिल्ली, 9 फरवरी, 2009

का.आ. 534.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय निबंधनाधीन निम्नलिखित कार्यालय को, जिसके न्यूनतम 80 प्रतिशत कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है :—

क्रम संख्या	कार्यालय का नाम
1.	क्षेत्रीय कार्यालय, कर्मचारी राज्य बीमा निगम, बेंगलुरु, कर्नाटक

[सं. ई-11017/1/2006-रा.भा.नी.]
शारदा प्रसाद, संयुक्त सचिव

New Delhi, the 9th February, 2009

S.O. 534.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union), Rules, 1976 (as amended 1987) the Central Government hereby notifies following office under the administrative control of the Ministry of Labour & Employment, at least 80% Staff whereof have acquired working knowledge of Hindi :—

Sl. No.	Name of the Office
1.	Regional Office, ESIC, Bangalore, Karnataka

[No. E-11017/1/2006-RBN]
SHARDA PRASAD, Joint Secy.

नई दिल्ली, 4 फरवरी, 2009

का.आ. 535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. ई. सी. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, धनबाद के पंचाट (संदर्भ संख्या 32/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-20012/259/2001-आई आर(सी-1)]
स्नेह लता जवांस, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 535.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2002) of the Central Government Industrial Tribunal-cum-Labour Court, No.1, Dhanbad now as shown in the Annexure in the industrial Dispute between employers in relation to the management of M/s. E.C. Ltd., and their workmen, which was received by the Central Government on 4-2-2009.

[No. L-20012/259/2001-IR (C-I)]
SNEH LATA JAWAS, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No I, DHANBAD
In the matter of a reference U/s. 10 (1) (d) (2A) of
I.D. Act.

Reference No. 32 of 2002

Parties : Employers in relation to the management of
Gopinathpur Colliery of E.C. Ltd.

AND

Their workmen

Present : Shri H.M. Singh, Presiding Officer.

APPEARANCES:

For the employers : Shri B.M. Prasad, Advocate.

For the workman : Shri D. Mukherjee, Advocate.

State : Jharkhand. Industry : Coal.

Dated, the 28th January, 2009.

AWARD

By Order No. L- 20012/259/2001-IR (C-1) dated 19-9-01 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

" Whether the action of the management of M/s. ECL in dismissing Sri Subodh Gorai from the service of the company is fair and justified ? If not, to what relief is the concerned workman entitled ?"

2. Written Statement has been filed on behalf of the concerned workman stating that Sri Subodh Gorai, concerned workman, was a permanent Grade- II Clerk and had been working since long with unblemished record of service. The anti-labour management with an ulterior motive to victimise the concerned workman issued a false and frivolous chargesheet dated 10/11-3-1981. The charge-sheet was issued by an unauthorised person that too in utter violation of the provision of the Standing Order. The concerned workman replied to the chargesheet denying the false and concocted allegation and though the explanation submitted by the workman was satisfactory enough still then the management conducted an invalid and irregular enquiry through a biased and prejudiced Enquiry Officer. The concerned workman was not afforded full opportunity to cross-examine the management's witness or to produce the defence witness. The Enquiry Officer replied on some alleged documents which were not produced in presence of the workman nor copies of the same were supplied to the workman. The suspension allowance was not paid to the workman before conducting the enquiry. Even in the preliminary enquiry the Enquiry Committee found the concerned workman not guilty. The finding of the Enquiry Officer was perverse and not based on evidence on record. The management dismissed the concerned workman on the basis of invalid and irregular enquiry. The dismissal letter was issued by an unauthorised person. The concerned workman represented before the management against the illegal and arbitrary dismissal order and at that time the workman was advised to wait patiently on the ground that the matter being referred to Headquarter for decision. The concerned workman represented before the management several times for his reinstatement and also approached different authorities under the wrong advice of the Advocates. The concerned workman also lost his mental balance due to sudden dismissal and resultant poverty which caused disbalance of mental set-up. Thereafter the matter was referred for conciliation proceeding. The conciliation proceeding ended in failure and the Government of India, Ministry of Labour referred the dispute for adjudication to this Tribunal. It has been stated that the action of the management in dismissing the concerned workman is not justified. So, it has been prayed that the Tribunal be pleased to answer the reference in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. Written statement has been filed on behalf of the management stating that the reference is bad in law and not maintainable. It has also been said that the present dispute under Sec. 2 (K) of the I.D. Act is not valid industrial dispute in the eye of law. As a matter of fact there is no dispute muchless any industrial dispute and the same is fit to be dismissed in limini. The reference order is vague and suffers from the vice of total non-application of mind by

the Government and it is therefore vitiated. The sponsoring union has no locus standi in the matter as the so-called person is not its member and it is not competent to raise any industrial dispute. The reference order also puts the cart before the horse and the Opp. Party is not required to take any action as envisaged in the reference order. The reference is also invalid for the reasons that no demand was ever made to the Opp. Party. The point in the alleged reference is specified for adjudication and the same deserves to be read subject to Section 10 (4) of the I.D. Act and this Hon'ble Tribunal shall have to confine its adjudication to this point. The question which is not directly raised in the reference will have not to be considered even indirectly while determining another matter. Without prejudice to the aforesaid preliminary objection but strongly relying on the same the employers beg to submit their case on merit that no dispute was raised by the employee with employer. The concerned workman was a senior clerk posted at Nirsa Units of Govindpur Colliery to perform the duties of a pay clerk in the month of November and December, 1980 and January and February, 1981. In course of performance of his duty as pay clerk he committed a serious misconduct of fraud, dishonesty, forgery and violation of standing orders by paying less to some of the worker than their actual wages during the aforesaid months and to cover up less payment he interpolated the wage-sheet and did not record the amount in the identity card of the workman concerned at the appropriate column. The concerned workman approached the management through their union bringing allegation against the concerned workman for making a less payment to them to the tune of Rs. 20 to 30 on each count at the time of payment by adopting various fraudulent means. The management deputed one Sri R.D. Sharma and others to make preliminary enquiry on the allegation made by the union, namely, R.C.M.S. and the workman concerned on the basis of the preliminary enquiry a prima facie case was established against the concerned workman and the chargesheet dated 10/11-3-81 was issued to the concerned workman to which he submitted reply by letter dated 14-3-81 denying the allegation levelled against him. The management constituted a committee comprising of few persons to conduct the departmental enquiry on the charges levelled against the concerned workman by letter dated 16-3-81 and presenting officer was also appointed vide letter dated 23/24-3-81. The enquiry committee held the departmental enquiry after serving the notice to the concerned workman number of days in his presence. In the departmental enquiry the concerned workman was given full opportunity to appoint a co-worker to assist him in his defence, to cross-examine the management's witnesses, to give his own statement and to produce his defence witnesses and documents. The concerned workman fully participated in the enquiry without raising any objection against the procedure adopted by the enquiry committee. The enquiry was held fairly and properly and in accordance with the

principle of natural justice. The Enquiry Officer submitted his report dated 27-9-91 holding the concerned workman guilty of the charges levelled against him. The Disciplinary Authority after considering the enquiry report dismissed the concerned workman by letter dated 24/25-6-82. The concerned workman accepted his guilt before the enquiry committee and also before the disciplinary authority and he did not raise any dispute from the date of his dismissal till the present case as he was fully aware of the fact that his dismissal was legal, bonafide and justified. The concerned workman in some cases did not mention the amount paid to the worker and in majority of cases the concerned workman distorted the figures of actual amount by over writing and in many cases he paid less than the actual amount mentioned against their names in the wage sheet in the month of November, 1980 and in the month of December, 1980. In view of the aforesaid circumstances the employer has prayed before the Tribunal that the action of the management is justified and the concerned workman is not entitled to any relief.

In rejoinder to the written statement of the management the workman has stated that the preliminary point raised by the management has no legal leg to stand and the same is being raised only to delay the proceeding of the case. It has also been submitted that the Hon'ble Supreme Court in catena of cases held that public sector undertaking management should invite adjudication of the case on merit inspite of raising technical and frivolous point to delay the proceeding of the case. The other things are same and similar which have been stated in the written statement.

4. Both the parties have not adduced oral evidence.

5. By order dated 31-8-2006 the Tribunal held that the domestic enquiry held by the management is unfair and not proper.

6. The learned counsel of the workman argued that the Tribunal has already held that the domestic enquiry is not fair and proper and the management has not adduced any evidence to substantiate its case, so in the circumstances the management has to suffer.

7. The main argument on behalf of the management is that the reference has been made very late, but there is no force in the argument of the managements as in the Industrial Disputes Act there is no limitation, so on this ground the reference cannot be rejected.

8. The learned counsel for the workman argued that in I.F.L.R. 1999 (81) page 188 between Neeta Kaplish Vs. P.O., Labour Court, the Hon'ble Supreme Court held that in the event the enquiry is held not fair and proper and if the management fails to adduce evidence to prove the charge, then the workman is entitled to reinstatement with full back wages. Their Lordships also held that once an enquiry is held not fair and proper this Court cannot

look into the evidence and documents adduced and produced in the domestic enquiry. The Hon'ble Supreme Court laid down.

"If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in such circumstances, would be justified in passing an award in favour of the workman. If, However, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of fresh evidence."

The learned counsel of the workman also referred that in the event the dismissal is held to be illegal then the normal rule is for full back wages for the forced idle period -reported—2004 LLR-966.

The learned counsel of the workman also referred that in the Industrial Disputes Act there is no provision for going into the validity of reference — reported in 2000 (84) FLR 162.

9. The learned counsel of the workman also referred—(1) 1999 (82) FLR 137, (2) 2001 LLR 900, (3) 2002 (2) LLN 406 and 2007 (115) FLR 675 and 2008 (1) JLI (SC) in which Hon'ble Court laid down that no reference can be rejected on the ground of delay.

10. As per written statement it shows that the concerned workman performed the duties of pay clerk in the months of November and December, 1980 and in the month of January and February, 1981. Regarding less payment of some workers as per enquiry report only Rs.50 total in the month of November, 1980 and in the month of December, 1980 only Rs.110 the detail is given below:

In November, 1980

1. Sri Churka Majhi	...	Rs. 10
2. Sri Bedi Majhi	...	Rs. 20
3. Sri Nunulal Majhi	...	Rs. 20

In December, 1980

1. Sri Churka Majhi	...	Rs. 40
2. Sri Lakhi Ram Majhi	...	Rs. 20
3. Sri bedi Majhi	...	Rs. 50

It shows only Rs. 160 less payment is said to be given by the concerned workman in the preliminary enquiry.

11. It has been argued on behalf of the workman that due to trade union rivalry the concerned workman has been falsely implicated on the complaint of rival union which seems to be correct because as per enquiry report it shows that on the complaint of the union the enquiry has been set up against the concerned workman.

12. Moreover, when the enquiry was held by my predecessor not fair and proper, so it shows that the concerned workman was dismissed without fair and proper enquiry and in that case when no additional witness has been produced by the management in that case the management has to suffer, as per law laid down by the Hon'ble Supreme Court reported in 1999 Indian Factories and Labour Reports (Vol. 81) page 188 when the management has failed to adduce any evidence to substantiate its case then it has to suffer. Therefore, I come to the conclusion that the action of the management in dismissing the concerned workman is not fair and justified and hence he is entitled to be reinstated with full back wages.

13. Accordingly, I render the following award—
The action of the management of M/s. E.C.Ltd. in dismissing Sri Subodh Gorai from the service of the company is not fair and justified, so the concerned workman is entitled to be reinstated in service with full back wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 4 फरवरी, 2009

का.आ. 536.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, धनबाद के पंचात (संदर्भ संख्या 105/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-20012/553/2000-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/2001) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C. Ltd., and their workmen, which was received by the Central Government on 4-2-2009.

[No. L-20012/553/2000-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD.

In the matter of a reference U/s. 10 (1) (d) (2A) of the I.D. Act, 1947.

Reference No. 105 of 2001

Parties : Employers in relation to the management of Laikdih Deep Colliery of M/s. B.C.C. Ltd.

AND

Their workmen

Present : Shri H.M. Singh, Presiding Officer.

APPEARANCES:

For the employers : Shri B.M. Prasad, Advocate.

For the workman : Shri S.N. Sinha, Advocate.

State : Jharkhand. Industry : Coal.

Dated, the 5th January, 2009.

AWARD

By Order No. L-20012/553/2000-IR (C-I) dated 30-4-2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of M/s. BCCL, Laikdih Colliery in dismissing Sri Jaidev Kundu from the service w.e.f. 22-4-99 is just, fair and legal ? If not, to what relief is the workman entitled ?"

2. The order of reference was received in this Tribunal on 4-6-2001. After notice both parties filed their respective written statements, rejoinders and documents. 5-11-2008 was the date fixed for filing of rejoinder by the workman on the petition of the management by which another case of the same person/workman was earlier disposed of in the year 2005 as Reference No. 44 of 1999 in the said Tribunal. In this respect Shri S.N. Sinha, Advocate, appearing for the workman submits that he does not intend to file any rejoinder and also does not intend to contest this further.

3. In view of such submission made by Shri Sinha, Advocate, on behalf of the workman, I pass a 'No Dispute' Award in the present reference case.

H.M. SINGH, Presiding Officer

नई दिल्ली, 4 फरवरी, 2009

का.आ. 537.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय संख्या-I, धनबाद के पंचाट (संदर्भ संख्या 245/1994) को प्रकाशित करता है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-20012/269/93-आई आर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 537.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 245/1994) of the Central Government Industrial Tribunal/Labour Court, No. I, Dhanbad now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. B.C.C. Ltd., and their workman, which was received by the Central Government on 4-2-2009.

[No. L-20012/269/93-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 245 of 1994

PARTIES: Employers in relation to the management of Khas Kusunda Colliery of M/s. B.C.C. Ltd.

AND

Their workmen

PRESENT: Shri H.M. Singh, Presiding Officer.

APPEARANCES

For the employers : Shri S.N. Sinha, Advocate.

For the Workman/Union : Shri B.N. Singh,
Representative

State : Jharkhand. Industry : Coal.

Dated, the 23rd January, 2009.

AWARD

By Order No. L-20012/269/93-IR (C-1) dated 24-10-1994 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“ Whether the action of the management of Khas Kusunda Colliery of M/s. Bharat Coking Coal Ltd. in denying advantage of retirement under Clause 9.4.3 of NCWA-III to Shri Bhisundeo Yadav, Mining Sirdar is justified ? If not, what relief is the concerned workman is entitled to ? ”

2. The workman has filed written statement stating that the concerned workman, Bhisundeo Yadav, was working as Mining Sirdar at Khas Kusunda Colliery of M/s. BCCL and he was referred for medical examination alongwith other workmen and after the said medical examination he was found unfit for doing this job. The said medical examination was conducted and completed at Godhure Regional Hospital of M/s. BCCL in pursuance of management's letter dated 7-10-1991 and the concerned workman was declared medically unfit alongwith Golak Bouri, Haulag Operator, Khedan Rewani, Fireman and Janki Mahato, Trammer of Khas Kusunda Colliery. It has been stated that after declaring medically unfit for doing their duties, three workmen except the concerned workman were stopped from their work by the Dy. C.M.E. of Khas Kusunda Colliery by issuance of letter to them in view of the medical report regarding their unfitness, but much surprisingly the concerned workman was not issued any letter to the said effect and was not stopped as was done in the case of others. The concerned workman was not stopped from work and he was directed by the management to attend his duties arbitrarily and unjustifiedly ignoring his unfitness to do the job. As such the said workman had to report to his duties where his attendance was marked daily and he had to sit idle there without doing any work. The concerned workman used to report to the management daily about marking of his attendance by the attendance clerk and about his remaining idle and sitting without doing any work but the management did not pay any heed to his such reporting. It has also been stated that the concerned workman had been moving to the management for his medical examination since about two and a half years prior to his such medical examination and had the management acted promptly and had the management been fair and sincere in his matter he would have been declared medically unfit much earlier i.e. about two and half years and should not have been forced to do his job unwillingly and with treat tension and difficulties and later on after the said medical examination by remaining idle. The management denied the benefit of clause 9.4.3 of N.C.W.A III to the concerned workman in an unjustified manner and with malafide intention. The concerned workman was entitled to secure employment to one of his dependants under the said clause in view of his medical unfit. The management also made discrimination between the concerned workman on the one side and other three workmen on the other side by providing benefit of clause. 9.4.3 to other three workmen and denying the same to the concerned workman. The action of the management of Khas Kusunda Colliery of M/s. B.C.C. Ltd. in denying advantage of retirement under clause 9.4.3 of NCWA-III to the concerned workman is unjustified. It has been prayed that the action of the management in denying advantage of the said clause to the concerned workman is unjustified and the concerned workman is entitled to get the said advantage under said

11. In view of the above discussions I render the following award—

The action of the management of Khas Kusunda Colliery of M/s. B.C.C. Ltd. in denying advantage of retirement under clause 9.4.3 of NCWA-III to Shri Bhisundeo Yadav, Mining Sirdar is justified and the concerned workman is not entitled to any relief.

H.M. SINGH, Presiding Officer

नई दिल्ली, 4 फरवरी, 2009

का.आ. 538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी. सी. एल. के प्रबंधन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, धनबाद के पंचाट (संदर्भ संख्या 112/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-20012/483/98-आई.आर.(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 538.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/1999) of the Central Government Industrial Tribunal/Labour Court, No. I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C. Ltd., and their workmen, which was received by the Central Government on 4-2-2009.

[No. L-20012/483/98-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of
I.D. Act, 1947

Reference No. 112 of 1999

PARTIES: Employers in relation to the management of
Mudidih Colliery of M/s. B.C.C. Ltd.

AND

Their workmen

PRESENT: Shri H.M. SINGH, Presiding Officer.

APPEARANCES

For the Employers :	None
For the Workman :	None
State : Jharkhand.	Industry : Coal.

Dated, the 29th January, 2009.

AWARD

By Order No. L-20012/483/98-IR(C-I) dated 4-6-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal :

"Whether the action of the management of West Mudidih Colliery of M/S.BCCL in not providing employment to Sh. Lakshman Singh, the dependant son of Smt. Teras Bai, M/C Stacker under V.R.S.(Female) is justified? If not to what relief the dependant son of Smt. Teras Bai is entitled?"

2. The reference order was received in this Tribunal on 4-6-1999. Thereafter in spite of notice sent by registered post to the sponsoring union, none appeared on behalf of the concerned workman take any step. This reference case is of the year 1999. But till 21-1-2009 no one is present from either side nor any step have been taken by the sponsoring union. It, therefore, appears that neither the concerned workman nor the sponsoring union is interested to contest the case.

3. In such circumstances, I pass a 'No Dispute' award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 4 फरवरी, 2009

का.आ. 539.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. आई.आई. एस. सी.ओ.लि. के प्रबंधन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, धनबाद के पंचाट (संदर्भ संख्या 8/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-2-2009 को प्राप्त हुआ था।

[सं. एल-20012/270/98-आई.आर.(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 4th February, 2009

S.O. 539.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/1999) of the Central Government Industrial Tribunal/Labour Court, No. I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. TISCO. Ltd., and their workman, which was received by the Central Government on 4-2-2009.

[No. L-20012/270/98-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of
 I.D. Act. 1947.

Reference No. 8 of 1999

Parties: Employers in relation to the management of
 Chasnalla Colliery of M/s. OSC Ltd.

AND

Their workmen

Present: Shri H.M. SINGH, Presiding Officer.

APPEARANCES

For the employers : Shri D. K. Verma, Advocate.
 For the workman : D. Mukherjee, Advocate.
 State : Jharkhand. Industry : Coal.

Dated, the 27th January, 2009.

AWARD

By Order No.L-20012/270/98-IR(C-I) dated 28-1-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Chasnalla Colliery of M/s. IISCO Ltd. in dismissing the services of Sri Laxman Mahto, Dumper Operator for the theft of 20 Lit. of H.S.D. is justified? If not so, to what relief the workman is entitled to?"

2. The Written statement on behalf of the workman has been filed stating that he is permanent Dumper Operator at Chasnalla North Mine and has been working since long with unblemished record of service. The management was very much biased and prejudiced against the concerned workman for his affiliation to Bihar Colliery Kamgar Union and the management with an ulterior motive to victimise the concerned workman issued a false and frivolous chargesheet dated 25-8-93 and also suspended the concerned workman by another order dated 25.8.93. In the chargesheet the allegation against the concerned workman that the allegedly syphoned out about 20 Litre H.S.D. in two jerrycane from the vehicle which he was operating at that time. The allegation as levelled against the concerned workman was totally false, frivolous and unfortunate and the same was denied by the concerned workman emphatically. Though the explanation submitted by the concerned workman was satisfactory enough still then the management constituted an Enquiry Committee to complete the empty formality through a biased and prejudiced Enquiry Officer. The Enquiry Officer completed empty formalities in utter violation of principle of natural justice.

The Enquiry Officer did not allow the concerned workman to cross-examine the management's witness fully or of adduce his full defence witness. The Enquiry Officer recorded the alleged statement of the witness in English knowing fully well that the concerned workman can neither understand nor can read English. The Enquiry Officer did not allow the concerned workman to cross-examine the management's witness properly and he did not record actual statement of the witnesses. Even in the invalid and illegal departmental enquiry the charges against the concerned workman was not established still then the concerned workman was not dismissed by an unauthorised person on the basis of perverse finding of the Enquiry Officer. Sri C.R. Chakraborty, Senior Manager, had no legal authority to dismiss the concerned workman as per provision of the Certified Standing Order. The Concerned workman represented against the illegal, arbitrary dismissal order but without any effect. Thereafter, seeing no other alternative the Union raised as industrial dispute before the Asstt. Labour Commissioner (Central), Dhanbad, Challenging illegal and arbitrary dismissal order but the same ended in failure due to adamant attitude of the management. The Government of India, Ministry of Labour, referred the dispute for adjudication to this Tribunal. It has been prayed before this Tribunal to answer the reference in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. The management has filed written statement stating that the present reference is not legally maintainable. The concerned workman was on duty at H.K. Quarry on 21-8-93 during the 'B' shift workings which commenced at 3 p.m. and ended at 11 p.m. He was allotted the Haulpak Dumper No. 1409 for operation in the H.K. Quarry for transportation of over-burden from the quarry benches to the quarry dump where he was required to unload the overburden which was carried from the quarry bench. At the beginning of the shift the quantity of diesel available at the tank of the aforesaid dumper was 210 litres when the concerned workman took charge of the aforesaid dumper for operation.

He plied the dumper carrying overburden from H. K. Quarry to the overburden dump of that quarry completing two trips and during the operation of 3rd trip, he drove the aforesaid dumper from H.K. quarry bench to 3/4 quarry overburden dump without any order from the superior and without any reasonable cause and in that process he was at the 3/4 quarry overburden dump at about 7 p.m. Sri M. Mondal, Asstt. Colliery Manager Incharge of the quarries during 'B' shift, observed the vehicle moving out towards 3/4 quarry overburden dump and got suspicious about the conduct of the concerned workman and followed him in another dumper towards the 3/4 quarry overburden dump. After reaching the 3/4 quarry overburden dump, he observed that the concerned workman had removed HSD (high speed diesel) with the help of half inch dia rubber

tube from the diesel tank of the dumper No. 1409 and had filled up one Jerrycane of 10 litre capacity and was in the process of filling up one another Jerrycane of 20 litre capacity which had by that time being filled up only upto half of its capacity. Certain amount of diesel was found on the dump at that particular place which indicated spilling of diesel at the time of removal from the vehicle at that particular place. Sri Mondal called security personnel and got the two Jerrycanes filled with diesel and half inch dia rubber tube seized and thereafter followed the aforesaid dumper to the garage where the concerned workman took the same for repairing of the light. Sri Mondal got the oil tank measured and it was observed that 150 litres of diesel was available in the tank of the haulpak dumper No. 1409. As per the estimation, 40 litres of diesel had been consumed in the course of movement of the dumper for two trips at H.K. quarry and one trip to 3/4 quarry overburden dump and 20 litres of diesel had been pilfered by the concerned workman. He failed to explain the presence of half dia rubber tube and the 20 litres of diesel present in two Jerrycane by his side where he was standing closed to the diesel tank and the place drenched with certain overflow of diesel. It has been submitted that on the basis of the complaint made by Sri Mondal, the Asstt. Colliery Manager Incharge of the quarries during 'B' shift, a chargesheet was issued to the concerned workman by the competent authority seeking explanation from him for the misconduct committed by him. The chargesheet was dated 25-8-93 to which the concerned workman submitted his reply on 27-8-93. Sri R. Mohan, Personnel Manager was appointed as Enquiry Officer by letter dated 2-9-93 to conduct the departmental enquiry relating to the chargesheet dated 25-8-93 issued to the concerned workman and Sri M.P. Sinha, Superintendent of Mines, Chasnalla Colliery was appointed as Presenting Officer on behalf of the management by the competent authority. The departmental enquiry was held in presence of the chargesheeted workman who was given full opportunity to defend his case. He was given full opportunity to cross-examine the management's witnesses to give his own statement and to produce his defence witnesses. He did not raise any objection against the Enquiry Officer or the Presenting Officer or the procedure of enquiry followed by the Enquiry Officer. The enquiry was conducted fairly and properly in accordance with the principles of natural justice, and submitted his enquiry report dated 22-6-94 holding the concerned workman guilty of the charges levelled against him. The disciplinary authority, after complying all the formalities and after perusing the enquiry proceedings, enquiry report and all relevant papers including past conduct came to the conclusion that imposing of penalty of dismissal on him would be justified as he committed serious misconduct of theft and dishonesty. Accordingly, he issued the order of dismissal dated 8-11-94 dismissing the concerned workman from his service with immediate effect.

In rejoinder the management has stated almost the same things which have been stated in written statement. It has also been admitted that the concerned workman was a dumper operator of Chasnalla Colliery and was holding permanent post at the time of his dismissal from his service. It has been denied that the management was biased and prejudiced against the concerned workman. It has been stated that the management was not aware if the concerned workman was member of Bihar Colliery Kamgar Union or of any other union. It has been denied by the management that the concerned workman was victimised by the management or that the chargesheet dated 25-8-93 contained false and frivolous allegations. It has been denied that the Enquiry Officer was biased and prejudiced against the concerned workman and he violated the principles of natural justice in conducting the enquiry. It has been stated that no complaint was made by the concerned workman against the Enquiry Officer for recording the statement in English nor he filed any petition for recording the statement in any other language. It has been denied that Sri C. R. Chakraborty was not competent to issue chargesheet or to appoint Enquiry Officer or to dismiss the concerned workman as per the provisions of the Certified Standing Order.

It has been prayed that the Tribunal be pleased to pass the award holding that the concerned workman is not entitled to any relief.

In rejoinder to the written statement of the management, the workman has submitted that the concerned workman was deputed to perform his duty at H. K. Quarry on 21-8-93 and the concerned workman had performed his duty sincerely and efficiently as per direction of the management. It has been denied that he had driven dumper of H. K. Quarry bench to 3/4 quarry overburden dump without any direction, authorisation and permission. It has been denied that Sri M. Mondal, Asstt. Colliery Manager had allegedly observed of moving out towards 3/4 quarry overburden dump and allegedly got suspicious and that he had allegedly observed that the concerned workman had removed HSD (high speed diesel) with the help of half inch dia rubber tube from the diesel tank of the Dumper No. 1409 and had allegedly filled up an jerrycane of 10 litre capacity and allegedly was in the process of filling up another jerrycane of 20 litres capacity which allegedly at that time being filled up only to half of its capacity. It has also been denied that certain amount of diesel was allegedly found on the Dumper at the particular place where alleged spilling of diesel taken place. It has also been denied that Sri Mondal had called security personnel and allegedly got the jerrycane filled with diesel and half inch dia rubber tube was allegedly seized. It has been submitted that the dismissal of the concerned workman was not justified and accordingly it has been prayed before the Tribunal to answer the reference in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

4. The management has produced MW-1 R. Mohan who is posted as Chief Personnel Officer in Delhi Office of IISCO. In the year 1994 he was Personnel Officer in Chasnalla Colliery. He had conducted the domestic enquiry regarding charge levelled against Lazman Mahato, the concerned workman. The concerned workman participated in the enquiry. He held the enquiry fair and proper keeping in view the principle of natural justice. The Charge was proved against the concerned workman and the Enquiry Officer found him guilty and accordingly the Enquiry Officer submitted his report. Exts. M-1 to M-11, which are enquiry papers, have been marked formal proof being dispensed with.

5. The concerned workman argued that MW-1, the Enquiry Officer of the management had not served the copy of enquiry report to the concerned workman before final order of punishment. In this respect MW-1 admitted in cross-examination that there was no paper before him to prove that a copy of enquiry report was served to the concerned workman prior to dismissal. Another argument of the workman is that no witness has been produced by the management who has said that the concerned workman has got H.S.D. before him. The management's witness Madhav Mondal was examined in domestic enquiry and in cross-examination he was put question at page 4 of the enquiry proceeding — "Did you see my taking out diesel from dumper?" His answer was 'No'. Another witness of the management — Sikandar Lal — was put question in cross-examination at page 8 — "Did you see me at any time removing diesel from my dumper?". He replied 'No'. It shows that the management witness has not supported the case of the management and it is necessary to have been proved by cogent evidence. It shows that there is no eye witness for removing diesel from the dumper by the concerned workman. In this respect the management's witness (MW-1) stated in cross-examination at page-2 — that he did not remember whether there was any eye witness to the theft of diesel. He has stated that the management had not filed any log book or document to show that how much diesel was supplied to the concerned workman and after return of the dumper how much diesel was found in the said dumper. It shows that without any cogent evidence the Enquiry Officer submitted report against the concerned workman without any basis.

6. In this respect learned counsel of the workman referred S.C.L.J.-Vol-10 page 159, 2008(2) J.L.J.R (SC) 61, and 2004(100) FLR 843 in which he has stated that under 11-A of the I.D. Act the court can take lenient view and come to the different conclusion than the conclusion reached by the Enquiry Officer. The learned counsel of the workman argued that before dismissal no second show-cause notice was issued prior to dismissal. On this ground the dismissal is abinitio void. In this connection the workman referred — Current Labour Reports 1991 pg. 61, 2002 (94) FLR 1076 and 2008 (2) J.L.J.R (Jharkhand High Court), page 513. The

learned counsel of the workman also referred 1989 Lab. I.C. 1043. He also argued that the concerned workman is entitled for reinstatement with full back wages because he was dismissed illegally and arbitrarily. He has referred Supreme Court Service Ruling (1950 to 1992) - Vol - (3) page 808.

7. The management has not proved the theft of diesel of 20 litres from the concerned workman because no witness has stated in domestic enquiry that in his presence the concerned workman had removed 20 litres diesel from the dumper in his possession. Moreover, before passing final order, the Enquiry report add show-cause notice were not served on the concerned workman.

In view of the discussions made above, I come to the conclusion that the management is not justified in dismissing the concerned, hence he is entitled to reinstatement with 50% back wages.

8. Accordingly, the following award is rendered —

The action of the management of Chasnalla Colliery of M/s. IISCO Ltd. in dismissing the services of Sri Laxman Mahto, Dumper Operator for the theft of 20 litres of H.S.D. is not justified and the concerned workman is entitled to be reinstated in service with 50% back wages. The management is directed to reinstate the concerned workman in service with 50% back wages within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 फरवरी, 2009

का.आ 540.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेन्डर्ड चार्टर्ड बैंक लि. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई न.-2 के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-02-2009 को प्राप्त हुआ था।

[सं. एल-12012/174/2006-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 10th February, 2009

S.O. 540.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2007) of the Central Government Industrial Tribunal-cum-Labour Court, No.2, Mumbai as shown in the Annexure in Industrial Dispute between the management of Standard Chartered Bank Ltd., and their management workmen, received by the Central Government on 10-02-2009.

[No. L-12012/174/2006-IR (B-1)]

AJAY KUMAR, Desk Officer

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ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, MUMBAI****Present: A.A. LAD, Presiding Officer****Reference No. CGIT-2/37 of 2007****Employers in Relation to the Management of Standard
Chartered Bank Ltd.****The Associate Manager-Employee Relations,
Standard Chartered Bank Ltd.,
23-75, Mahatma Gandhi Road,
Fort, Mumbai 400001.****First Party****V/s.****Their Workmen****Ms. Vandana Joshi,
Flat No.102, Building No.A/11,
Rutu Enclave,
G.B.Road, Thane (West).****Second Party****APPEARANCE****For the Employer : Ms. P.S. Shetty, Advocate****For the Workmen : Mr. Arshad Sahikh, Advocate****Date of reserving the Award : 09-01-2009****Date of passing the Award: 22-1-2009.****AWARD****The matrix of the facts as culled out from the proceedings
are as under:**

1. The Government of India, Ministry of Labour by its Order No.L-12012/174/2006-IR(B-I) dated 10th August, 2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Standard Chartered Bank, Mumbai in terminating the services of Ms. Vandana Joshi w.e.f. 24th June, 2006 is legal and justified? If not, what relief the workman concerned is entitled to?”

2. To support the subject matter involved in the reference 2nd Party filed Statement of Claim at Exhibit 3 stating and contending that, the concerned Workman after completing her education from Kurkshetra University GNC College did PGDBM degree in the Retail and Franchise Management course. It is further contended by her that, she has a considerable work experience in the field of Financial Services.

3. It is contended by her that, in the month of February, 2006 she came across the requirements of the 1st Party for appointment of Consultants with their various branches across India and after submission of her work experience and in pursuance to personal interview conducted by the panel of office bearers of the 1st Party, she was offered appointment as a Personal Financial Consultant in Band SB based in Mumbai vide offer of appointment letter dated 27-4-2006. The said appointment was related to management of Personal Banking Customers which forms part and parcel of the business of the 1st Party. It submitted by the 2nd Party that, she was asked to work under the instructions and under the control of the Branch Manager and was supposed to report all work related decision to the Branch Manager and only upon her approval, 2nd Party was supposed to implement the same as per the directives. In short the 2nd Party was directly under the control of Branch Manager of Bank for all purposes of her services. It is further submitted by the 2nd Party that, in pursuance to the said offer she accepted the assignment on a permanent cadre and communicated her acceptance to the 1st Party on 28-4-2006 and accordingly she was appointed vide letter dated 2nd May, 2006 on a permanent post on a guaranteed pay of Rs.2,80,000 per annum, she was also entitled for Provident Fund deductions as well as gratuity and pension and the appointment was in the nature of permanent getting all benefits at the age of superannuation and also retrieval benefits upon superannuation and she was appointed in a permanent post. Accordingly 2nd Party joined the Bank at 23-25 M.G. Road Branch, on the said terms and conditions with effect from 2nd May, 2006.

4. It is further submitted by the 2nd Party that, due to her hard work and good behaviour coupled with sincere concentration in work, she became popular in the Branch and she was getting good response from the customers also. Looking to her rapid success in her Branch she became a eyesore for the Branch Manager Ms. Tripti Shrivastava. The Branch Manager started creating hurdle in the success of the 2nd Party and created problems and objected her working. Branch Manager sometime in the month of May end even stopped 2nd Party from attending meetings which were held in the Branch to access the general business of the Bank. It is submitted by the 2nd Party that, she tried to solve the doubt of the Manager, but could not succeed and Miss Shrivastava kept on creating trouble in the working of the 2nd Party from time to time. The Manager also had issued Memo to the 2nd Party on false and baseless charges. She duly replied those, however the charges leveled in the Memo were baseless and false hence no action was taken by the Branch Manager. 2nd Party further submitted that, these illegal activities were committed by the Branch Manager only to create an adverse service record of the 2nd Party. To the shock of the 2nd Party, she received a letter dated

23rd June, 2006 issued under the signature of Associate Manager, Human Resource, intimating the 2nd Party about the termination of the services on account of improper behaviour and conduct with the customer, Line Manager, and fellow colleagues. 2nd Party further submitted that, the said termination order was effective from the date of issuance, without even issuing a show cause notice nor holding enquiry or issuing charge sheet prior to issuance of such order. It is further submitted by the 2nd Party that, a bare perusal of the termination order dated 23rd June, 2006 reveals that, the same is punitive in nature and the same amounts to a stigmatic service record of the 2nd Party. 2nd Party after receipt of the said termination order, immediately filed an appeal before the Executive Committee of the 1st Party narrating the detailed incidents on the basis of which she was victimized and vindicated by the Branch Manager. However, there was no heed paid by the Management of the 1st Party and there was no reply or communication to the said appeal.

5. It is further submitted by the 2nd Party that, since there was no response to the appeal filed by 2nd Party, she sent a legal notice dated 22nd July, 2006 to the 1st Party, through her Counsel Advocate Mr. Ganesh Desai, reiterating the facts. It is further submitted by the 2nd Party that, in reply to the said legal notice issued a communication vide reply dated 9th August, 2006 wherein for the first time false, and baseless allegations were made against the 2nd Party. Interestingly these allegations does not fall a part and parcel of the order of termination and the same was just by way of an afterthought and to cover up the false story and to harass the 2nd Party. 2nd Party replied to the said letter vide her letter dated 9-8-2006 denying charges levelled against her vide its communication dated 27-8-2006.

6. It is further contended by the 2nd Party that, the 1st Party kept silent on her communication hence she had no alternative but to approach the Ministry of Labour, New Delhi and file Conciliation Proceedings vide representation dated 30-8-2006. The Ministry after receipt of the said conciliation notice, initiated proceeding for conciliation and in the said conciliation proceedings 1st Party filed its written statement wherein they reiterated their earlier stand which was taken in their letter dated 9-8-2006 and the said allegations were denied by the 2nd Party by filing its counter affidavit. 2nd Party submitted that, Ministry after considering her representation and reply of the 1st Party referred the matter to with a finding about the failure of the conciliation proceedings to the Ministry of Labour, New Delhi for making a Reference. However, the Ministry vide its order dated 19-4-2007 refused to refer the matter on the ground that, as 2nd Party has not completed 240 days of service hence no dispute subsists. A bare perusal of the impugned order dated 19-4-2007 is totally without jurisdiction as the conciliation proceeding does not contemplate an

adjudication of the dispute neither the Conciliation Officer has a authority nor power of law. Therefore, the 2nd Party challenged the impugned order before High Court by filing Writ Petition No.4529 of 2007 raising the issue of, "Whether mere non-completion of 240 days of service would entitled the 1st Party to terminate the services of the 2nd Party without following due process of law", and other legal points and the Hon'ble High Court while allowing the said Writ Petition observed that, mere non-completion of 240 days of service would not be a ground for refusing to make a reference and permit first Party to terminate. So Hon'ble High Court was of the opinion that, when the order of termination is stigmatic and punitive in nature it directed the Ministry of Labour to refer the matter and, accordingly, the Reference has been forwarded to this Tribunal for adjudication of the dispute.

7. 2nd Party submitted that, the termination order as passed by the 1st Party was punitive in nature and further it was passed without following due process of law. Further a bare perusal of the appointment order of the 2nd Party would reveal that, she was appointed on a permanent basis, hence the question of completion of 240 days does not arise. It is further submitted by the 2nd Party that, the impugned order of termination was against the provisions of law as the same was stigmatic and thereby she was illegally dismissed from services.

8. 2nd Party further contended that, action of the 1st Party was illegal and without following the provisions of law, it terminated her services without giving any show cause notice and conducting inquiry. It is stated that, the order of dismissal was punitive in nature and a stigma has been casted upon her academic future. 2nd Party further contended that, the order of dismissal passed by the authority subordinate to the appointing authority cannot be sustained and it cannot be termed as legal and valid. The order passed by the 1st Party is punitive and stigmatic in nature and the same is illegal and without provisions of law as the order of dismissal was passed without conducting an inquiry or show cause and hence is also in breach of principles of natural justice. It is submitted by the 2nd Party that, she was a victim of the personal vindicate of her superiors and hence she has been illegally dismissed from service. She claim that, the impugned order needs to be quashed and set aside on these grounds also. 2nd Party submitted that the said order in terminating the services is even otherwise bad, illegal and against the provisions of law and does not stand to the scrutiny of the legal provisions and therefore liable to be quashed and set aside in the interest of justice.

9. It is further submitted by the 2nd Party that, in pursuance to the impugned stigmatic and punitive order passed by the 1st Party, all future doors of her employment have been closed as she has been virtually treated as a person with stigmatic record and hence she could not get

any job work of any nature whatsoever. It is stated that, due to the said illegal order of termination, the entire experience of the Party No.2 has become useless as in all employment the reference of the impugned order disentitles her for any appointment and she any could not get any employment from the date of her termination. She states that, she is jobless and has fallen to the personal vindictive of the 1st Party and its staff. 2nd Party, therefore, prayed for allowing her claim and declaration that, the impugned order of termination dated 24th June, 2006 as bad, illegal and against the provisions of law and pray to grant reinstatement with full back wages with all terminal benefits as are admissible to her as if she would been in service along with continuity in service.

10. Management Standard Chartered Bank opposed the claim of the 2nd Party by filing Written Statement at Exhibit 6 challenged the maintainability of the Reference contending that, it is illegal, bad in law, without jurisdiction and is liable to be dismissed in limine on these grounds alone. 1st Party also raised preliminary objections on the maintainability of the reference contending that, the 2nd Party is not a "workman" as per the provisions of Section 2(s) of the Industrial Disputes Act, 1947 as 2nd Party was appointed as a Personal Finance Consultant and was placed in Band 8 of Management cadre. The key responsibilities of the said portfolio involved that, the 2nd Party achieve allocated business target and activity cross-sell Consumer Banking products and third party products, generate new business via sales promotions, out-marketing calls and presentations and in-branch contacts, participate actively in branch sales planning to generate action plans for meeting targets, ensure high level of customer service in the Branch, manage difficult customer situations, ensure compliance with internal and external guidelines and ensure minimal comments in audits and other inspections, ensure transactions are processed with a high level of accuracy and commitment in order to satisfy customer needs, ensure validity and completeness of transactions processed and ensure concessions relative to exchange rate, fees, charges etc. are authorized/overridden by appropriate authorities, take responsibility for general reconciliation and control activities, find ways to improve operational efficacy and control costs to meet cost budgets, gather, prepare statistics for service quality and productivity indicators, responsible for general reconciliation and control activities, be multi-skilled to handle all kinds of transactions and services in the Bank and manage attrition of the base. It is, therefore, contended by the 1st Party that, the said duties assigned to her and performed by her do not bring her within the ambit of the definition of workman under section 2(s) of the Industrial Disputes Act, 1947. It is stated that, the 2nd Party is not entitled to raise an industrial dispute under Section 2(k) of the said Act. It is stated that, this Tribunal will have no jurisdiction to entrain, hear and decide the present Reference.

11. It is contended by the 1st Party that, the 2nd Party was terminated from services in terms of the clause relating to termination of service stipulated in her appointment letter dated 2nd May, 2006 and that, the 2nd Party was issued an addendum to the appointment letter containing various clauses including her declaration of having accepted all terms and conditions of her appointment. 2nd Party having accepted the said terms now, estopped from saying that, the said terms are not acceptable or are illegal. It is contended by the 1st Party that, the termination of the services of the 2nd Party was a simple discharge and hence there is no question of the same being stigmatic in nature, as is evident from the relieving letter cum certificate of employment dated 29th June, 2006.

12. It is further stated by the 1st Party that, if this Hon'ble High Court comes to the conclusion that, the Bank ought to have conducted an enquiry before terminating the services of the 2nd Party it craves leave under Section 11 A of the Industrial Disputes Act, 1947 to lead evidence to substantiate its action and sustain its order of termination.

13. It is contended that, the 2nd Party in her capacity as a Personal Financial Consultant, was given the job role of allocating business targets, ensuring high quality customer service ensuring internal and outside compliance on all branch transactions, handling difficult customer situations and contributing to the overall achievement of business growth. 1st Party further submitted that, these duties were supervisory, administrative and managerial functions relating to State Promotions and hence the 2nd Party would not fall within the meaning and definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. It is further contended by the 1st Party that, the 2nd Party was issued two letters dated 5th June, 2006 and 7th June, 2006 via email detailing various incidents of improper behaviours and conduct with her customers, Line Managers and fellow colleagues. 2nd Party failed and neglected to carry out her job as per the processes of 1st Party even after the same was brought to her notice. It is further contended that, services of the 2nd Party were terminated by letter dated 23rd June, 2006 since her performance was not in consonance as per the requirements of the 1st Party and it was not possible to retain her and, accordingly, her services came to be terminated.

15. 1st Party denied that, it has illegally terminated the services of the 2nd Party without following the due procedure of law and that, the 2nd Party is entitled to an order of reinstatement with full terminal and back wages. 1st Party also denied that, she is hardworking and she has not furnished any particulars about the identity of the person/institution who has praised her sincerity nor she has given the particulars of assignment in which she claims to have succeeded.

16. 1st Party contended that, it is matter of record that, the 2nd Party was offered appointment vide letter dated 27-4-2006 for the post of Personal Financial Consultant in Band 8B based in Mumbai. 1st Party denied that, the said appointment made any mention about the said appointment being related to the management of Personal Banking Customers, but as per para 2, of the letter of appointment dated 2nd May, 2006 there is a clear stipulation that, the 2nd Party would be placed in the Bank's Management Cadre at Band 8B and that her designation would be Personal Financial Consultant, in terms of the offer of Appointment made to her. 1st Party also denied the contentions of the 2nd Party that, she being subordinate was answerable to the Branch Manager, or that she was asked to work under the instructions and under the control of the Branch Manager and that, the appointment letter contained any stipulation that, the 2nd Party had to report all work related decisions to the Branch Manager and only upon her approval 2nd Party was supposed to implement the same as per directives or that she was directly under the control of the Branch Manager of the Bank for all purposes of her service. It contended that, it is pertinent to note that, the offer of appointment dated 27th April, 2006 and the subsequent letter of appointment dated 2-5-2006 makes any reference to the appointment of the 2nd Party being related to the management of Personal Banking Customers. 1st Party also denied that, she was subordinate and answerable to the Branch Manager of the Bank for all aspects of her daily job and was asked to work under the instructions and control of the Branch Manager. 1st Party contended that, the appointment letter only mentioned that, she had to report to Tripti Srivastava, Branch Manager on or before 2nd May, 2006 through whom the 2nd Party had to submit her joining report.

17. 1st Party denied the claim of the 2nd Party that, she was hard working or that, her behaviour was good and proper. 1st Party also denied the allegations made against Ms. Tripti Srivastava and contended that, the termination was perfectly justified. 1st Party further submitted that, the termination dated 23-6-2006 is a matter of record and the Bank was constrained to terminate her services as no improvement was noticed in her performance was not as per Bank's requirements and expectations. It is stated that, the question of issuing a show cause once again does not arise as she was already issued letters dated 5-6-2006 and 7-06-2006 and the Bank was not satisfied with the reply dated 15-6-2006 received from her. 1st Party submits that, the Second Party was terminated from the services with the Bank on her failure to maintain the standards of behaviour set for an official in the management cadre, 1st Party contended that, the termination was as per the terms of her appointment and hence there is no question of the same being stigmatic as alleged. 1st Party also denied the allegations that the reply

dated 9-8-2006 was false and baseless. 1st Party did not put all these allegations in the termination order dated 23-6-2006 as it was a simple discharge. However, 1st Party seek leave of this Court to substantiate its action by leading evidence before this Court at the appropriate stage and denied the contentions of the 2nd Party made in para 7 of the statement of claim. 1st Party also denied that, it was keeping a blind eye as falsely alleged. 1st Party denied that, the termination order as passed was punitive in nature and that it was passed without following the due process of law. 1st Party contended that, the 2nd Party was appointed to a permanent post and not on a permanent basis. 1st Party contended that, 2nd Party had to work for the minimum number of days as specified by the Service Rules of the 1st Party and it denied that, the termination was illegal and against the provisions of law and that it was stigmatic. 1st Party contended that, 2nd Party was appointed to the post of the Personal Financial Consultant (PFC) in the management cadre. On a scrutiny of the work performed by her, it can be seen that she had to perform the duties in her independent capacity and that, her duties did not bring her within the ambit and definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 and the onus lies upon the 2nd Party to justify her contentions that she falls within the meaning and definition of workman u/s 2(s) of the Industrial Disputes Act, 1947 which she has miserably failed to do so. 1st Party denied the allegation that, the order of dismissal is passed by an authority subordinate to the appointing authority or that it cannot be sustained under the provisions of law. 1st Party denied that, the order of termination of the 2nd party is punitive, stigmatic, illegal, without holding a domestic enquiry, or that it is in breach of the principles of natural justice or that, the 2nd Party is a victim of a personal vindictive of her superiors or that the same needs to be quashed and set aside. 1st Party denied that, the 2nd Party is entitled to an order of allowing the Reference or for a declaration that, the impugned order of termination is bad, illegal and against the provisions of law. 1st Party denied that, the 2nd Party is entitled to an order of reinstatement with full back wages with all terminal benefits.

18. 1st Party further in short contends that, the 2nd Party served with it for a period of less than two months and has not completed a period of 240 days to claim protection. The 2nd Party was appointed in the post of Personal Financial Consultant and the duties for the said post were purely supervisory, administrative and managerial in nature with regard to sales promotion activities of the Bank as is evident from the various documents on which it craves leave to rely. Hence, her termination on 23-6-2006 was a discharge simpliciter and cannot be termed as punitive. In the event this Court comes to the conclusion that, the termination of the 2nd Party is not a discharge simpliciter but is punitive in nature,

then, the 1st Party crave leave of this Court under Section 11 of the Industrial Disputes Act, 1947 to lead evidence and prove the charges before this Court. 1st Party, therefore, prayed that in the facts and circumstances reject the Reference with costs.

19. 2nd Party filed rejoinder at Exhibit 7 mostly repeating the same story as made by her in the Statement of Claim and denied the contentions raised by the 1st Party in its written statement. 2nd Party submitted that, under the provisions of Industrial Disputes Act, 1947, a reference can only be adjudicated and decided upon the terms of the Reference and the same cannot be dismissed as not maintainable and on this ground alone the defence raised by the 1st Party is not maintainable as this Court has no powers or authority to declare Reference as bad, illegal and hence the ground of maintainability of Reference is not valid and liable to be rejected in the interest of justice. 2nd Party reiterated that, she is working with the 1st Party as an employee and was appointed by it on the post of Financial Consultant in band 8 B based in Mumbai. The said appointment was related to management of Personal Banking Customers which forms part and parcel of the business activity of the 1st Party. It is submitted by 2nd Party that, she was subordinate and was answerable to the Branch Manager of the Bank and was asked to work under her instruction and control.

20. In view of the above pleadings Issues were framed at Exhibit 14 which are answered as follows:

ISSUES	FINDINGS
i) whether 2nd Party is a "Workman"?	Yes
ii) Does First Party proves that order under challenge is simply of "discharge" and does not qualify to challenge as "termination"?	No
iii) Whether second party proves that, in the absence of completing '240 days' she is entitled of permanency	Yes
iv) Does 1st Party justify its action of "discharge" or "dismissal"?	No
v) Is said act legal?	No
vi) Is second party entitled for relief?	Yes
vi(a) Is she entitled for back wages?	Yes
vii) What order?	As per order below.

REASONS:

ISSUE NO.1:

21. 2nd Party claims that, she is a "Workman" which is denied by the 1st Party stating that, she was appointed as "Personal Financial Consultant" in Band 8 B which is of Supervisory, Administrative and Managerial cadre. She

cannot fall under the category and definition of "Workman". She was appointed on guaranteed pay of INR Rs.3,16,000 comprising of Basic pay of Rs. 1,37,200 per annum, consolidated allowances including reimbursement Rs.1,42,800 per annum and HRA Rs.36,000. She was attending meetings. She was taking part in policy decisions regarding business of the 1st Party.

22. To prove her case 2nd Party placed reliance on her own depositions filed in the form of affidavit in lieu of examination-in-chief at Exhibit 19. In the said affidavit she contends that, she joined 1st Party as Personal Financial Consultant in the month of May, 2006 and reported for her duties to the Branch Manager Mrs. Tripti Srivastava. She contends that, she has no authority or power nor she was authorised to take any decision to complete any transaction. She contends that, she was at the lowest level in the Branch of which she has given hierarchy where Regional Head was the main under whom Cluster Head was working, then Branch Manager work and below that Line Manager work and below that P.F.C. and R.M. consisting of 6 posts each are working. 2nd Party was appointed as PFC and all PFCs report to the Line Manager. She contends that, she has to act strictly as per the directions given within limited parameters as per the directions of her superiors. She contends that, her work was cross checked by superiors and thereafter only final seal of approval was fixed on it. She further contended that, she has no authority or power to take independent decision regarding account closure. She contends that, she has to take permission at every step and seek authorization from her superiors. In the cross she admits contents that page 4 of Exhibit 18 her duties are given. Even she admits the contents of page 5 of Exhibit 18. She admits that, page 8 of Exhibit 18 shows the nature of her duties. She admits that, she received the same. She also states that, she did not perform the duties as shown on page 8 of Exhibit 18. She states that, she was posted at the lowest cadre and no employee work below her in the Bank. She admits that, she was supposed to follow all the KYC (Know Your Customer) norms.

23. On that 1st Party examined 2 witnesses. One of them is Pooja Banerjee, by filing her affidavit in lieu of the examination-in-chief at Exhibit 24. She states that, 2nd Party was appointed in terms of appointment letter dated 2nd May, 2006 as a Personal Financial Consultant in the management cadre in Band 8 B at Bombay office and she was directed to report to Mrs. Tripti Srivastava, Branch Manager. She states that, she was given guaranteed pay packet of Rs.2,80,000 per annum. In the cross she states that, 2nd Party Vandanta Joshi, was reporting to Branch Manager, Mrs. Tripti Srivastava. Even in the appointment letter she was asked to report to Srivastava Branch Manager. It is admitted by this witness that, nobody was reporting to Mrs. Vandana Joshi, 2nd Party, concerned Workman. It is admitted by the said witness that, she did

not sanction leave to anybody since nobody was reporting to her. She also admits that, 2nd Party was not recommending leave of anybody. This witness is not aware whether, 2nd Party was initiating any disciplinary proceedings against any of the employee. Even this witness admits that, 2nd Party was not having any power to initiate any enquiry proceedings. Whereas another witness of the 1st Party Mrs. Tripti Srivastava, who filed her affidavit, in lieu of the examination-in-chief at Exhibit 26 has stated about 2nd Party as stated by first witness, Mrs. Pooja Banerjee, of the Management. In the cross this witness about the work of the 2nd Party states that, sales target was given in writing to the concerned workman. 7 sales targets might have been given to the 2nd Party workman and each target is for the calendar year. This witness states that, she has no evidence to show that, 2nd Party had gone out to do any out door sales calls work. She states that, Insurance and mutual funds are the third party products that Bank sells and denied that, these projects are sold by Direct Sales Representatives (DSR). It is stated by this witness that, the PFC was supposed to verify the signature of the customer on the request taken by such workman and is required to ensure that requisition given by the customer tallies with that of the bank records and is as per the Banking practices and norms and that the KYC norms are followed. This witness admits that, she has no evidence to show that, 2nd Party participated in the meetings where policy decisions were taken. Even this witness admits that, 2nd Party was supposed to verify the documents of the customers for supervising the opening and closing of account of the customer. This witness admits that, for closing of account no higher officer has power to make any change. This witness admits that, 2nd Party was not having final authority for opening of Bank account. This witness also admits that, 2nd Party was not having power to sanction leave of any staff. Even this witness admits that, 2nd Party was not having any authority to initiate disciplinary action against any of the employee. On that evidence was closed by the 1st Party by filing closing pursis at Exhibit 27.

24. So on the point of "workman" witnesses, Ms. Pooja Banerjee and Mrs. Tripti Srivastava, examined by 1st Party at Exhibit 24 and 26 respectively, admit that, 2nd Party was not having power to sanction leave. She was not supervising work of anybody. Both witness admit that nobody was reporting to 2nd Party. They also admit that, 2nd Party was not having power to initiate any disciplinary proceedings against any of the employee. Even they admit that, they have no evidence to show that 2nd Party was participating in the meeting where policy decisions were taken. 2nd Party was just helping the customers to open account and both witnesses admit that, 2nd Party was not the final authority on the closing or opening of the customers account.

25. Ld. Advocate for the 2nd Party submitted that much capital is made of the salary offered to the 2nd Party

and remunerations mentioned in the appointment letter. He submits that, now a days salary cannot be the only criteria as number of Companies are offering such attractive salary to strengthen the market and to attract the customers to create image that it is a big Company. However, one has to see what is the nature of work which wholly reflect on the status of the "workman"?. Whereas 1st Party's Advocate contends that, appointment letter, designation given and salary offered vis-a-vis work done by the concerned does not permit her to claim as a "Workman".

26. The admissions given by the by both the witnesses of the 1st Party, viz. Mrs. Pooja Banerjee and Mrs. Tripti Srivastava at Exhibits 24 and 26 respectively prove beyond reasonable doubt that, 2nd Party was discharging duties of "Workman" and not of any "Administration". It is a fact that, her salary and her designation mentioned in the appointment letter definitely does not permit anybody by plain reading of it to say that, she is a "Workman". However, as submitted by the 2nd Party that, salary cannot be the only criteria since now-a-days there is competition in offering higher salary to attract the customers by that way to create an image that, Company is a big one in the market, However, one has to see the status of the workman and his functions and duties. Admittedly nobody report to 2nd Party. Admittedly she did not recommended leave. Admittedly she did not have power to initiate any disciplinary proceedings. She cannot recommend anybody. She cannot participate in the meetings or her decision is binding on the 1st Party. Just she is attending customers and observe KYC to maintain the status of the 1st Party in the market. So according to me the work done by the 2nd Party and duties discharged by her does not permit to take her out from the definition of the "workman".

27. Advocate for the 1st Party referred citation published in 1994 II CLR page 552 in the case of (H.R. Adyanthaya etc. vs. Sandoz (India) Ltd. etc.) on the point of "workman" but said citation is on different facts and on different nature of work allotted to the concerned workman. Another citation published in SC 2004 3 UPLBEC page 2632 in the case of Mukesh T. Tripathi vs. Sr. Divisional Manager LIC & ors. and citation published in 2006 1 CLR page 975 of Calcutta High Court in the case of Hongkong & Shanghai Banking Corporation Ltd. vs. Central Government Industrial Tribunal at Calcutta & ors. citation published in 1970(3) SCC page 378 in the case of Burmah Shell Oil Storage and Distribution Company of India Ltd. vs. The Burmah Shell Management Staff Association and ors., citation published in 1998 II CLR page 736 of our Hon'ble High Court in the case of Union Carbide (India) Ltd. vs. D. Samuel & ors. where test like (i) designation is not treated material but what is important is the nature of work, (ii) one has to see what is the role played by the Workman, (iii) whether his decision is binding on the Company, (iv) Whether the employee has

power to direct or oversee the work of his subordinates, (v) whether such a person has power to sanction leave or recommend it, (vi) whether the employee has power to appoint, terminate or take any disciplinary action. Besides it is observed that, following tests are also required to be taken into consideration while deciding status of the 'Workman' as 'Supervisory'. In that, case test is (a) Whether he can examine the quality of work and whether such a work is performed in satisfactory manner or not; (b) whether he has powers of assigning duties and distribution of work; (c) whether he can indent material and distribute the same amongst the workmen, (d) whether even though he has no authority to grant leave does he have power to recommend leave, (e) whether anybody work under him, (f) whether he has power to supervise the work of men and not merely machines, (g) whether he is competent to mark the attendance of the employees (h) whether he writes the Confidential reports of his subordinates. On the contrary facts in this case referred above if considered and verified whether these duties are discharged by the concerned workman at hand we find, said does not permit us to call the 2nd Party is working in the supervisory category. On the contrary these decisions help 2nd Party to claim as a "workman". Another citation referred by the 1st Party published in 1994 II LLJ Page 1153 (SC) of Apex Court in case of S. K. Maini vs. M/s. Carona Sahu Co. Ltd. & ors. where it was held that, the point of workman is to be decided with reference to principal duties and functions of the employees of the categories of "Supervisor" or "Workman". If we apply that test we find on the contrary this judgment does not help 1st Party to take her away from the definition of the 'Workman'. Advocate for the 1st Party also placed reliance on the citation published in 1996 I LLJ page 55 of our Hon'ble High Court in the case of Ramesh s/o Ramrao Wase vs. The Commissioner, Revenue Division, Amravati. Even citation referred by 1st Party's Advocate published in 2004 (2) LLN page 566 of our Hon'ble High Court in the case of Tanojkumar B. Chatterji vs. Solapur Municipal Corporation, Solapur does't help 1st Party in any manner and in any way to take 2nd Party away from the definition of the "Workman".

28. If we consider all this coupled with the case, made out by both I am of the considered view that, the 2nd Party is a "workman". So I answer this Issue to that effect.

ISSUE NO. 2 :

29. 1st Party took a stand that, decision taken by it is simply a decision of "discharge" and does not qualify the 2nd Party to treat it as her "termination" as claimed by the 2nd Party. Whereas case of the 2nd Party is that 'discharge' or 'termination' are one and the same thing and has the same effect i.e. it ends the services of a workman like this workman. Consequences and result of

both i.e. consequences of 'discharge' and consequences of "termination" is one and the same. Both cannot be distinguished as far as result is concern and concept of both is one and the same. According to 2nd Party result of both ends the services of the employees like concerned workman and doesn't permit workman to keep or claim relations with employer and permit to claim as employee. For that 1st Party placed reliance on the citation published in 2005 (7) SSC page 518 of in the case of State of Haryana anr. vs. Satyender Singh Rathore where Apex Court observed that, when enquiry is not conducted and when there was no finding of the Enquiry Officer still any decision if taken by the Management, it is nothing termination simplicitor as misconduct referred in the order was only a motive and not foundation. He also placed reliance on the citation published in 2003 (3) SCC page 263 in the case of Mathew P. Thomas vs. Kerala State Civil Corporation Ltd. & ors. Apex Court held that, show cause notice before termination of services of probationer on the lapses committed by performance held not stigmatic and no prejudice would be caused to the workman since it is simple order of simplicitor which does not invite any stigma. 1st Party also placed reliance on citation published in 2003 (2) SCC page 386 in the case of Dhanajay vs. Chief Executive Officer, Zilla Parishad, Jalna where Apex Court observed that, whether services of a temporary employee can be terminated under rule without holding any enquiry. In that case decision is simplicitor of cutting relations with employers.

30. Here 2nd Party challenge the decision of the 1st Party. Order of 1st party is on record. 2nd Party produced it with Statement of Claim at page 17 where in the said letter subject matter is referred as 'termination from services'. So the subject matter referred in the letter at para 17 filed with Statement of Claim reveals that, it is termination. Admittedly by the said letter she was relieved from the employment. Copy of relieving letter is filed at page 18 in the compliance of written statement. In the said relieving letter, it is mentioned that, services of the concerned workman with the Bank have been terminated and workmen will be relieved from the muster roll with effect from 23rd June, 2006. Besides in the termination letter 1st Party has informed that, Bank has decided to terminate her services with immediate effect. It is further stated that, said decision was taken, "in view of her improper behaviour and conduct with customers, Line Manager and fellow colleagues". So in the said termination letter stigma like "improper behaviour" and "conduct with customers, Line Manager and fellow colleagues" are leveled against the concerned workman. So definitely said is not simple discharge but it is some what more than what is tried to project by the 1st Party about 2nd Party. In the said letter serious stigma is there. In the said letter 1st Party try to weigh the services of the 2nd Party which she rendered during her service period with 1st Party. So

according to me decision taken by the 1st Party to is not simplicitor discharge but it is more than a simplicitor discharge which empowered the 2nd Party to challenge it. So I conclude that, it is the termination which permit 2nd Party to challenge it. So I answer this issue accordingly.

ISSUE NO.3:

31. According to 1st Party, 2nd Party worked for about 2 months. She did not complete 240 days and as such she cannot claim to qualify herself to claim as employee of the 1st Party. Whereas case of the 2nd Party is that, she did not require to do that though she did not work for more than 240 days to qualify her to Claim employee of the 1st party as she was already appointed on permanent post and on permanent basis. She claim that, her appointment was of permanent nature. 1st Party offered her appointment till she attain the age of superannuation. Even in the appointment letter she was permitted to claim retirement benefits, which included "Provident Fund" and "Gratuity" and "other benefits". When she was already appointed in that fashion she does not require to prove that, she has completed 240 days to claim employee of the 1st Party.

32. To prove working of 240 days by an employee, in my considered view will come in picture, when employer claims that Workman was appointed on "contract basis" or claim that, workman was appointed for "seasonal work" or workman was appointed "on daily wages" and still workman claim to be a permanent employee of the employer. Here it is not the case like that of the 1st Party nor of the 2nd Party. Appointment letter itself reveals that, 2nd Party was appointed as a Personal Financial Consultant in Band 8 B based in Mumbai. Her appointment guaranteed the pay of Rs.1,37,2001 per annum as basic salary, Rs.1,42,800 per annum as consolidated allowances, including reimbursement and Rs.36,000 as H.R.A. said appointment guaranteed her that, she will be entitled to HRA or Housing limits mentioned above as per her Band and current location. It is also disclosed that, she will be entitled to claim the consolidated allowances and reimbursement under various allowances and reimbursements as per specified limits applicable to her Band as per policy. Which includes Leave Travel Assistance, Domiciliary Medical expenses, Telephone Professional Development, Children's Education and Conveyance Allowance. This order does not reflect that, concerned workman was appointed on probationary period. It was not bought on record that, her probationary period was extended. It is her case that, she was not appointed on probation and 1st Party has no right to terminate her services during probationary period. Even she was permitted to claim pensionary benefits on retirement.

33. When 2nd Party was appointed on regular and permanent post without mentioning that, she was appointed on "probation" and without mentioning that, she has to complete "probationary period" in my considered view,

question of completion of 240 days to qualify her to claim as 'employee' of the 1st Party is not expected in this case. The case made out by 2nd Party rightly reveals that, even in the absence of completion of 240 days, she can claim permanent employee of 1st Party and her said appointment qualify her to challenge the decision of the 1st party which is taken by it without following due process of law. All this reveals that, she was appointed on permanent post. Hence, when she was appointed on permanent basis or on permanent post definitely she is protected by the provisions of Industrial Disputes Act, 1947. When she was appointed on permanent basis management was expected to issue charge sheet and was expected to call her explanation by giving memos or giving the concerned workman opportunity. In that case management was expected to conduct enquiry and obtain findings of the Enquiry Officer by giving opportunity to the concerned Workman. Record and proceedings as well as case of the first Party reveals that; in the absence of it, it appears that, no such charge sheet was given in the was instant case. No opportunity was given in the instant case. From this we find that, without issuing charge sheet, without giving opportunity to the concerned workman to explain about the alleged incident or charges, decision is taken by the 1st Party at their level which definitely is the decision taken against the principles of natural justice and against the provisions of Industrial Disputes Act, 1947.

34. The employee who is appointed on the permanent basis and on permanent post on the establishment of the employer in my considered view she is entitled for protection. In that case employer cannot terminate the services of such employee without following due process of law. Employer cannot end the services of the employee without issuing charge sheet, without calling explanation or without conducting enquiry and without obtaining findings of the Enquiry Officer. So in my opinion the 2nd Party is not supposed to complete 240 days to claim protection under the provisions of the Industrial Disputes Act, 1947 since she was appointed on permanent establishment of the 1st party. So I answer this Issue to that effect and conclude that, she is titled for protection though she did not complete 240 days in employment of the 1st Party.

ISSUE NO. 4 to 6 :

35. 2nd Party claims that, the decision of the dismissal or discharge is against the provisions of the Industrial Disputes Act, 1947. Said decision of discharge or dismissal is not legal and it is bias one. Said decision was taken following due process of law. No charge sheet was served. No opportunity was given to the concerned workman to explain. No enquiry was conducted. No finding was taken from the Enquiry Officer to take such a decision.

36. Evidence brought on record in the form of an affidavit in lieu of examination-in-chief of witnesses

referred above we find that, 2nd Party claimed that, she was illegally terminated only because she became eyesore for the Branch Manager to whom she was reporting. She also alleges that, said Manager did not like the popularity of the concerned workman. She claims that, said Manager did not like her progress. Whereas witnesses of the 1st Party admit that, no memo was issued to the concerned workman. Even they have no evidence to show that, any customer complained against 2nd Party. Even there is no evidence that, her fellow colleagues complained against her. Even both witnesses of the 1st Party state that, there were no complaints against the 2nd Party on record. Even both the witnesses state that, they do not know whether Bank received unsatisfactory response from the customers. There was no evidence about alleged incident between 2nd Party and Mrs. Tripti Srivastava, though said witness is examined by 1st Party who unable to point out in what manner, she acted and how it was against the norm of KYC. Even they admit that, appointment of 2nd Party was not for fixed term and it is stated that, her appointment was neither casual nor temporary. Even it is admitted that, there are check and cross check on the work of everybody in the Bank. Witness No.1. Pooja Banerjee at the end of her cross states that, she has no personal knowledge regarding what happened in the cabin of Smt. Tripti Srivastava. When Smt. Tripti Srivastava examined does not disclose any such incident. So when this is the position and when no positive case is made out by both the witnesses to remark about her work and to justify the action of the Bank terminating the services of the 2nd Party on that basis or on behaviour and conduct of the 2nd Party with the customers, Line Manager and fellow colleagues. I am of the opinion that, it require to consider seriously. Since there is no evidence on that point either of any Customer, Line Manager, nor of fellow colleagues and no any evidence is brought from that category in my considered view the allegations levelled against 2nd Party while terminating the services of the 2nd Party are imaginary and have no truth. So I conclude that, 1st Party unable to justify its action of termination. It is also unable to show that, it is legal one. So I conclude that, said termination require to quash and set aside. Accordingly I quash it and set it aside. Hence, I answer this issue to that effect.

ISSUE NO. VI(A):

37. 2nd Party is terminated with effect from 24th June, 2006. She was appointed w. e. f. 2-5-2006. That means she worked from 2-5-2006 to 23-6-2006 about two months. The remarks in the said termination letter is that, "her behaviour and conduct with customers, Line Manager and fellow colleagues" was not proper definitely carry stigma. Even in the evidence at Exhibit 19 she has stated that, she tried to approach various Companies and when her experience

certificates were demanded by them and looking to the remarks in the termination letter, nobody accepted her in the employment. She has produced those with Exhibit 21. On that 1st Party's Advocate comment that, nobody would write mentioning "Dear Vandana". Besides, all writing appearing in the same wording which might have been managed by 2nd Party to suit her purpose. No doubt nobody addresses to her like "Dear Vandana" as pointed by the 1st Party's Advocate produced at Exhibit 21. However, facts remains that, she did not get job. Whatever remarks are there on the letters produced at Exhibit 21 are not disputed by the Management. It reveals that, she did not get job. Even it is not the case of the 1st Party that, she is in gainful employment after her termination. It is a matter of record that, she is out of job from the date of termination i.e. from 23-6-2006. We are in January, 2009. 1st Party has not made out the case that, during that period she was in gainful employment. 2nd Party states that, she is depending on her brother and she is not in gainful employment. Said case one has to consider. In fact case made out by 1st Party does not reveal that, decision taken by it was just and proper or legal one. When decision of the 1st party is not legal that means it is wrong decision and for that wrong at premises question arises why 2nd Party should suffer?

38. If we consider all this coupled with the case of the 2nd Party that, she is not in gainful employment from the date of her termination which reveals that, she was unnecessarily harassed by 1st Party in terminating her services that too without following due process of law. So I am of the considered view that, she must get benefits of full back wages from the date of termination till she is reinstated. So I conclude that, she must be reinstated with back wages.

39. In view of the discussions made above I conclude that, 2nd Party is entitled to reinstatement with benefits of full back wages and continuation of services from the date of termination. Hence, I pass the following order:

ORDER

- (a) Reference is allowed;
- (b) 1st Party, Standard Chartered Bank Ltd. is directed to reinstate 2nd Party, Mrs. Vandana K. Joshi immediately by giving her benefits of full back wages and continuity of service from the date of her termination till she is reinstated;
- (c) 1st Party is directed to pay the cost of 2nd Party Rs. 5000 token and bear its own.

A. A. LAD, Presiding Officer

Bombay,
22nd January, 2009